A MANUELL
OR,
Briefe Treatiſe of ſome particular Rights and Priuiledges belonging to the High Court of PARLIAMENT:

Wherein is ſhewed how of late times they have been violated.
The true condition of the *Militia* of this Kingdome, ſo much now controverted both by King and Parliament, by the Poſitive Lawes diſcuſſed and debated, with a briefe touch of the Royall Prerogative.

Neminem oportet eſſe ſapientiorem legibus.

Job 8. 8.

Interroga priſtinam generationem & inveſtiga patrum memoriam.
Ipſi docebunt te & loquentur tibi & ex corde ſuo proferent eloquium.
Heſterni enim ſumus, & ignoramus & vita noſtra eſt ſicut umbra ſuper terram.

By *Robert Dreham* of Graies-Inne Eſquire.

London printed for *Mathew Walbancke* at Graies-Inne Gate. 1647.

A MANUEL

for the Use of

Private Families of Some Par-

ticular Rights and Priviledges

belonging to the High Court of

PARLIAMENT:

Wherein is shewed how of late

those have been violated.

The true Foundation of the Militia of this

Kingdome, as much now controverted

by King and Parliament, by the Power

Lawes directed and declared with a

brief Touch of the Royal

Prerogative.

Norman conquest of England.

Job 6. 8.

To the Honourable and truly religious, the Commons of *England*, now Assembled in Parliament at *Westminster*.

May it please you:

THis little Treatise (some may say) needs no Dedication, *Res enim ipsa loquitur*; The subject and matter of this Discourse pointing like the Heliotrope to the Sun, unto the High and Illustrious Assembly of PARLIAMENT, whose influence and favour are alone sufficient; yet since it hath pleased God to raise you up in this distressed King-

dome, as bleſſed meanes and inſtruments of his glory, and of the good of this Common-Wealth (as it is certainely hoped) in compoſing theſe unhappy differences, by your eminent Wiſedome and ſupreame Authority, and your fidelity and conſtancy in this great truſt committed unto you, being ſo apparent unto all men; as alſo this worke for the moſt part being extracted out of your owne learned Declarations, and Remonſtrances imparted to publike view. I am upon theſe reaſons emboldned to addreſſe my ſelfe unto you for protection againſt Calumny and detraction. And although I know nothing herein contained but what is warranted by the Lawes of this Realme, and

and by the rules of truth, yet in as much as I am not hereby justified, I crave your favourable censure, concluding what I have written of your judicious view wholly unworthy, and the Author hereof in respect of your noble and high deserts shall ever remaine,

Your Honours in all duty and service obliged:

Robert Derham.

The Preface to the Reader.

Courteous Reader:

IT *is a true saying,* Pro captu Lectoris habent sua fata libelli, *the capacity and apprehension of the Reader is fatall to every thing committed to publike view; however this being a legall* **Treatise it must stand**, *or fall by the judgement of the wise and learned in the Lawes of this Kingdome. The summe of this Discourse is grounded upon the Positive Lawes, termed of late times the knowne Lawes. I have chosen to enter into Combate with our Adversaries at their owne Weapons, as they please to chuse them, though happily it may prove disadvantagious; and this is done with moderation (I hope) to silence, if not satisfie the obstinate.*

ſtiuate. Take this worke out of the Loome, and withall Anatomize it, with all the curious and cunning diſſections of Art and wit; ſpare it not, yet I am confident it ſhall abide firme againſt all oppoſition. I will conclude with this Corollarie, Edicite mundo quod mundus eſt vanitas veritas autem eſt magna & prevalebit. *Farewell.*

A Manuell or briefe Treatiſe of ſome particular Rights and Priviledges belonging to the High Court of PARLIAMENT.

I Am injoyned out of my duty to my Country, and my zeale to the Publike good, to compile this little Treatiſe; little in regard of the Author, great in regard of the Subject matter, wherein I proteſt before the Supreme Judge of Heaven and Earth to deliver the truth, and nothing but the truth, according to the Lawes of this Realme eſtabliſhed, whoſe unparalleld diſtractions both in Church and Commonwealth I cannot but with great griefe conſider: *Quis talia fando temperet a Lachrymis.*

The Mother and Nurſe unto us all this formerly moſt happy and bleſſed Nation, now perſonated in the fable habit of a moſt mournefull widow: *Quæ corrupis oculos fletu,*

which hath loſt her glorious Lampes, even her eyes with weeping. *Sparſo quoque infantibrem modum crine terribilis.* Terrible to beholders with diſhevel'd haire, making moane for her irreparable loſſes, attending the funeral Obſequies of her deare Children, requeſteth, nay requireth us all to bewaile her miſeries, and to redreſſe her diſperate calamities.

But to leave off preambles as tedious, and to come to the Diſcourſe intended, I doe with ſincerity of heart, deteſting the Doctrine and Practiſes of Browniſts, Anabaptiſts, Sectariſts, and as one that truely honoureth the true reformed Proteſtant Religion, lament and much deplore the ſorrowfull condition of this Kingdome, the amiable Lawes and Goverment being now become deſpicable, through the violation or neglect at leaſt of the fundamentals, I meane the juſt and due Rights and Priviledges of that High and Supreame Court of Parliament, in whoſe ſafety and flouriſhing eſtate conſiſteth the happineſſe of this Common-wealth, and in the contempt of that illuſtrious Aſſembly, this renowned Nation will of free-borne Subjects become ſlaves, and degenerate from thoſe noble reſolutions which their Anceſtors did inherite.

For to let paſſe the diſturbances in this Church of *England*, and the Goverment thereof, and the meanes to redreſſe the ſame, being not properly within my cogniſance or knowledge, and peradventure permitted by

by Divine Providence to evidence to the world the errours and folly even of his owne Ministers, and the unsearchable Wisedome of God, even past mans finding out. My purpose is onely at this time to treat of the High Court of Parliament, and the Lawes and Liberties of the Subject in them represented, whose infallibility I shall not labour to maintaine, as being men of the like passions that we are; but the Venerable estimation which the wisedome of the Law hath evermore attributed unto them, not in respect of their Persons, but of the Government and Justice which in them primitively resides, whose gravity, prudence, and integrity hath been in all Ages much admired, and their judgements and resolutions (till these unhappy times) held indispurable; for, inquire of your Ancestors, if the gray-headed Common Law (whose funeralls are now in the judgement of man approaching through the popular dis-estimation of this High Court) did not here receive if not its first subsistence, yet its power and glorious estate even to these times? The Kings just and due Prerogatives, if not here first framed, yet from time to time here strengthened and corroborated; witnesse that ancient Statute called *Prerogativa Regis* made Anno 17. E. 2. wherein certaine of the most weighty and great Prerogatives pertaining to the Crowne are contained and declared, as saith that learned Judge *Stamford*. The rich Gemmes and inestimable

This Station is declaratory of the Prerogative, not Introductive.

treasure both in Church and State from this Fountaine derivatively issuing and proceeding, and shall now the honour of this Court so ancient be deserted? And shall it not with the lives and estates of all noble minded *English-men* be maintained as sacred, and as just and lawfull defended? For to come to particulars, wherein I will observe this order and method. First, I will present you with the Lawes and Priviledges of Parliament apart by themselves, and such of them onely as are unanimously acknowledged for undoubted Rights and Priviledges of that high Court. In the next place I will deliver unto you the Expofition of the said Priviledges by the positive or knowne Lawes, or parallel them with the rights and priviledges of inferiour Courts of Justice, as also shew the violation of them briefly. And last'y, I will observe some particulars worthy the consideration both in Government and State, arising evidently from the premisses, or not impertinently depending thereupon; where you shall likewise finde some Lawes and Statutes of this Realme remarkable for use incidently debated.

The method of this Discourse.

But in the first place before the handling of these, I would desire you to take notice that the Priviledge of Parliament, and the Law of Parliament is of one sence in Law, *Privilege quasi privata lex.* Amongst the severall Lawes of this Kingdome, by Sir *Edward Coke* mentioned in his *Institutes*, the Law of Parliament is one meaning,

Priviledge of Parliament the law of Parliament.

ning, principally the priviledges and proceedings of that Court, mentioned in the Rolls and judiciall Records thereof. For the Lawes there enacted having no speciall relation to that Court, are not intended in this sence, the Law of Parliament; of which Law it is said, *Ista lex, & consuetudo Parliamenti est ab omnibus quærenda, a multis ignorata, a paucis cognita.* Lex Parliamenti What it is.

This premised, the first Priviledge of Parliament that I shall offer unto you is this, That if any of either Houses shall offend or commit any Crime, that they themselves shall have the censure and punishment thereof; yea, the ancient Custom of the House of Commons is, That if any shall chance of that House to offend, or not to doe or say as becommeth him, or if any shall offend them being called to that His Highnesse Court, that they themselves (according to their ancient Custome) have the punishment of them; which last priviledge of the House of Commons is very large, pointing out unto us, That this House of it selfe is a high Court of Justice, and extendeth as well to Strangers as Members of the same in their power of Judicature. And it appeareth that matters of Parliament are not to be ruled by the Common Law; as also that if they might have been elsewhere punished, it shall be intended that sometimes it would have been put in ure, and the Presidents that have been against the Law in this point, have been in all ages condemned as illegall. And for

proofe of theſe afore recited particulars, you may peruſe that much to be honoured Lawyer Sir *Edward Cooke*, in his Booke called *The Juriſdiction of Courts*, tit. Parliament, as alſo Sir *Thomas Smith* in his Common-wealth of *England*, Fol. 18. a learned Gentleman in both Civill and Common Law, ſo that you ſee here a poſitive priviledge belonging to the High Court of Parliament in Criminall matters, which no inferiour Court of Juſtice can claime, which I ſhall likewiſe prove unto you a poſitive priviledge without qualification, notwithſtanding the enſuing Objection.

Obj. That to Caſes of Treaſon, Felony, and the Peace, priviledge of Parliament ſhall not extend, for the priviledge of Parliament here intended is the priviledge of that high Court in Civill Actions, which is an utter ceſſation of all proceedings during Parliament, either in that Court or elſewhere in an ordinary courſe of Juſtice, and upon theſe words priviledge of Parliament is a legall acception, having onely relation to that high Court of it ſelfe, and to the proceedings thereof, and to no other Court of Juſtice, and in this ſence it is only taken by the words of this Law.

Priviledge of Parliament a legall acception.

Priviledge of Parliament a legall exception.

Priviledge of Parliament is likewiſe a legall exception, and ſo it hath a relation to other Courts of Juſtice, which exception any Member of Parliament may make uſe of, to quaſh all proceedings againſt him in inferiour Courts in Criminall matters; and

and as to that part of this priviledge nothing is intended by this Law, for the Members of Parliament offending criminally shall be subject to the Censure of that Court, and not elsewhere without their leave, therefore the priviledge before mentioned of this high Court in Criminall matters remaineth firme, and no waies nullified by the words of this Law. His Majesty in one of His Declarations laboureth much to disprove the sence and meaning of this Law to be thus taken.

For then saith the penner thereof, Where is the restriction of this Law, that to Treason, Felony, and the Peace, priviledge of Parliament shall not extend. This priviledge remaineth as large as any other priviledge of Parliament notwithstanding this Law, if this be the exposition; for no priviledge can intend a totall Cesser of Justice. Object.

I answer: These words are opperative of this Law, and yet they are mistaken in their explication of them, for the priviledge is not so large in Criminall matters as it is in Civill, and that by reason of these words restrictive, for in Criminall matters they shall be subject to Censure in an ordinary course of proceedings in that Court by Endictment, Bill, or otherwise by the meaning of this Law, whereas in Civill Actions it is not so, there is no positive course of proceeding against any Members of Parliament, they are onely left to an extraordinary course of Justice, Petition, or other- Sol.

In Criminall matters ordinary and positive proceedings in Parliament, in Civil not so. Nota.

wise as the pleasure of that great Court will permit. So you see this Law or priviledge justified notwithstanding any Objection, and no Cesser of Justice.

Object. It is further objected, that if this shall be the meaning and exposition of this priviledge, then this mischiefe will follow, That if a Member of Parliament shall commit a Murder or Robbery at *Yorke*, the Parliament sitting at *London*, then if he may not be questioned untill the pleasure of Parliament be knowne he may escape; and so a heynous crime protected or permitted with impunity by this priviledge.

Sol. I answer; The Law is plaine, and the priviledge of Parliament just; this opposition notwithstanding; for he may be arrested, or his person secured by any Minister of Justice, to be delivered to the Justice of that Court upon notice of their pleasure, and so (I take it) the priviledge of Parliament is no wayes infringed; he cannot be imprisoned, or his person secured by any man as Minister of any inferiour Court, but as Minister in this particular to the Court of Parliament, there to be censured and not elsewhere.

No Member may be Arrested by any, but as minister to that Court.

Object. Hence happily it may be gathered, that before this Law restrictive afore specified in criminall matters, there was no proceedings as in Civill, in Parliament against any Members thereof in an ordinary course of Justice, and therefore this Law was made somewhat to abridge this high priviledge, namely in this, that any Member offending

shall

ſhall be ſubject to the cenſure of that great Court, in an ordinary courſe of Juſtice, which before he was not, but in an extraordinary way, by Petition or the like, in which condition he now ſtands as to civill actions.

To this I can give no poſitive anſwer, but I rather incline to thinke that this Law was rather parcell of the priviledge it ſelfe, or contemporary with it, and no ſubſequent Law, and ſo this collection formerly mentioned not materiall. Alſo I conceive that if this Law before objected ſhall be found ſubſequent to the priviledge of Parliament in this particular, which for my part I doe not credit, yet before this Act or Law delinquent Members thereof were not exempt from Juſtice but onely in a poſitive courſe of proceeding, they were ſtill ſubject to the cenſure of that high Court in an arbitrary way, and ſo no Ceſſer or defect of Juſtice, which were a thing of ſo honourable a Tribunall not to be imagined.

Thus you ſee the wiſedome of the Law in the framing of theſe great priviledges in Criminall matters, becauſe both God and man require, *feſtinum remedium*, the offences being exorbitant, Juſtice open and cannot be denyed even in an ordinary Courſe. Alſo the Houſe of Parliament being firſt acquainted therewith, and their leave obtained, Cenſure may be elſewhere, not otherwiſe: in civill actions not ſo, but an utter ceſſation of neceſſity of ordinary courſe of Juſtice, for if otherwiſe the Parliament would

The Reaſon and ground of the Priviledge of the Parliament both in Criminall and Civill matters.

Nota.

would be filled with private Suits and Actions, and many of them frivolous; the many and weighty affaires of the Kingdome in the meane time neglected. To conclude, the Parliament you see hath that high Priviledge in Criminall matters communicated to no other Court of Justice, but in Civill Actions there are some foot-steps of this great Priviledge in inferiour Courts; In the Common Pleas a Writ of Priviledge or *Supercedeas*, to stay proceedings against any member of that Court; and if the party hath cause of Action, he ought to Sue in the Common Pleas: parallel this case with the Priviledge of Parliament in Civill Actions, you will finde it almost the same. The *Supersedeas*, or Writ of Priviledge removeth not the Cause, no more is the Cause removed by clayming the priviledge of Parliament, but a *Cesset processus legis quousq. &c.*

The Priviledge of Parliament paralleld with the priviledge of inferiour Courts in Civill matters

If the Party hath cause of Action he must Sue in the Common Pleas, so may he, I take it in Parliament by Petition, or otherwise as the pleasure of that Court will permit, but not in any course of Justice ordinary, as he may in the Common Pleas: here the priviledge of Parliament exceedeth the priviledge of inferiour Courts.

Priviledge of Parliament in Civill Actions greater then of inferiour Courts

Likewise in Common Pleas priviledge for Strangers, *Eundo, redeundo* concerning their Suits there, and this extends as well to their persons to free them from Arrest, as to their goods necessary for their Suit and Charges; priviledges of Parliament (I take) the same, I need not use repetition.

Now

Now to haſten to an end of this, the reaſon why the Law hath given unto this High Court, this and many other priviledges is for the publike good, to the end that Parliaments which are to the State *Tanquam medicus ægro*, like the Phiſitian to a ſicke perſon, ſhould not be eluded or fruſtrated by ſuggeſtions of Crimes againſt any members thereof by the King, or any perſons whatſoever, being taken away from the ſervice of the Houſes & tryed elſewhere by inferiour Courts, for ſo they might take away all, and conſequently make a Parliament what they would, and when they would; which is a breach of ſo eſſentiall a priviledge, that even the very being of Parliaments dependeth thereupon.

The very being of Parliaments depend upon the priviledge in Criminall matters.

His Majeſty in one of his Declarations ſaith, That the Parliament themſelves in the beginning of his Raigne, in a Petition unto him preſented by both Houſes in the caſe of the Earle of *Arundell*, acknowledged their priviledge not to extend to Treaſon, Felony, and the Peace; the words are, They finde it an undoubted right and conſtant priviledge of Parliament, that no Member of Parliament (ſitting in the Parliament, or within the uſuall times of priviledge of Parliament) is to be impriſoned or reſtrained without Order or Sentence of the Houſe unleſſe it be for Treaſon, Felony, or for refuſing to give Sureties for the Peace. I have faithfully and truly opened all matters that make any waies againſt me, and ſo I will (God willing) throughout this

Object.

The priviledge of Parliament in expreſſe words by the ſelves preſented to the King.

this whole Diſcourſe, let the Reader impartially judge.

Sol. Priviledge of the Parliament as large as before notwithſtanding the words of this petition,

Although theſe words fore-going of this petition be very large, and ſeeme much to abridge this privil dge, yet upon trueexamination they doe not; for the words, That none ſhall be impriſoned or reſtrained, &c. plainely relate to civill actions or proceedings; the words, Unleſſe in caſe of Treaſon &c imply they ſhall be ſubject to impriſonment or reſtraint; but note the words, they doe not ſay of any inferiour Court, but ſtill the privile dge remaineth the ſame notwithſtanding the words of thi petition. But here it may be objected, that I have left out that which makes moſt againſt me, viz. theſe words, Without order or ſentence of the Houſes, implying cleerly, that in Caſes of Criminall the order and Sentence of the Houſe is not requiſite, but they may be proceeded againſt without leave. But marke the words and then judge, it is plaine by their ſence and meaning, that in civill actions they cannot be proceeded againſt, without ſentence and order of Parliament, no ordinary courſe of Juſtice. The order of Parliament upon petition or the like is an extraordinary and Arbitrary courſe of Juſtice; but in Criminall matters they may be cenſured without ſentence and order of the Houſe; that is, in an ordinary and poſitive way of Juſtice, but this muſt be in the high Court of Parliament it ſelfe, and not elſe-where without their leave, and ſo is the ſence of theſe words to any rationall

Sentence and Order of the Parliament an extraordinary courſe of Juſtice upon the words of this petition. Nota.

rationall man well obſerving. There is no power given to inferiour Courts by theſe words either expreſſe or implyed, but the priviledge continueth the ſame it was, nothing diminiſhed by the words of this petition. Nota.

Further, if we ſhould admit the tryall in inferiour Courts this miſchiefe would follow; that their Judgements might peradventure be legall yet not juſt, it being lawfull for a man to open his Conſcience here; ſo farre without dread or feare in any matter touching the Common-wealth, or any particular perſon in a Parliamentary way, which in other Courts would be held a crime, and by the poſitive Lawes of this Kingdome puniſhable. This being ſo, the violation of this priviledge reſts to be proved, and truly I am ſorry to enter into the prooſe of it, it reflecting ſomewhat upon the Kings moſt excellent Majeſty, whoſe Royall Perſon I ſhall ever unfeignedly honour. But ſurely it is the unhappineſſe of Kings to be abuſed by evill Counſell, and the errour is not to be imputed to the King, but to his Miniſters. But ſince I muſt ſpeake, it is *Selt lucem inferre*, to hold a Candle before the Sunne, ſo evident it is, it needeth no prooſe at all, for is not the breach of this priviledge in freſh memory, when the now Members of both Houſes ſhould have been taken from them in an unuſuall way? I will not ſay by violence, if they had been there preſent, to the great feare and aſtoniſhment of that preſent Aſſembly

The poſitive law in inferiour Courts, and the law of Parliament inconſiſtent and differing, yet both juſt in their proper motion, *Vide poſtea.*

Assembly; but I will say no more as supposing this Act unjustifiable, however not yet absolutely disclaimed for ought that I could ever yet see, but his Majesty hath declared in print, that he would proceed against them in an unquestionable way; which words in what sence they may be taken, I doe not for my part certainly know, as being obscure to my understanding, and not to all intents satisfactory; which violation I take it hath been since pursued in his Majesties Declaration of the twelfth of *August*, 1642. in offering to prefer an Indictment upon the Statute of 25. *E.* 3. against divers Members of the House therein named, and I take it his meaning is not in Parliament, but of this I will speake no more.

(Unquestionable way) by these words, not pronounced innocent, but rather criminous.

A generall Declaration of the proceedings of this Parliament.

Another right of Parliament is this; That every Member of both Houses shall upon Summons come to the Parliament, unler the paine of Amercement, and other punishment, as of old hath been used to be done, as appeareth by the Statute of 5. *R.* 2. *cap.* 4. and also by the Statute made 6 *H.* 8. *cap.* 16. It is enacted, that no Member of the House of Commons shall depart from the Service of the House without leave of the Speaker of the House of Commons, and the Commons in Parliament Assembled; which license shall be entred in the Booke of the Clarke of the Parliament upon Record, under paine of losing those summes of Money which they should have had for their Wages; by both which

Statutes

Statutes it doth appeare, that departure from the House of Parliament without leave is a Crime, and punishable of ancient times; for so it appeareth by the first of these Statutes, which was but declaratory of the Law formerly used, and that the punishment was Fine and Imprisonment, and sometimes Arbitrary, appeareth by ancient Authority of Law. But it may be objected, that by a clause in the Statute of 5 R. 2. before named, it is no Crime if the Member of Parliament so absenting himselfe, can reasonably and honestly excuse himselfe to our Lord the King: so that the King by this Statute is made the sole Judge of the offence, and if the King License or Command the absence of any Member of either Houses it is sufficient.

5 R. 2. Of the Common Law declararory.

Object.

To which I answer, That the Statute is not to be intended in that sence, that all Parliaments may be made frustrate and void at the will and pleasure of the King, by his License, or Command of the absence of any Member of Parliament, without great cause for the same, for that were not reasonable and honest, as the words are, *Et verba accipienda cum effectu* as the Law saith, and otherwise the very essence of Parliaments would be shaken by such exposition.

Sol.

But to make a full Answer to these words: Our Lord the King before mentioned in the Statute, are in Law taken for the King in his Politick Capacity, not in his Personall, and so it is no more then if the words had

had been to our Lord the King in his Court of Justice in his high Court of Parliament, and so the Court of Justice is the Judge, and not the King personally, and so is the Law frequently takan; for to give you an instance or two, and that in a Statute Law as this is, in the Statute of *Merton*, cap. 3, are these words: *Statim capiantur & in prisona Domini Regis detineantur quousque per Dominum regem, vel alio modo deliberentur.* Here the words *Dominum Regem*, our Lord the King are intended the Court of Justice of our Lord the King, and not the Kings Person; and so in the Statute of *Marle-bridge*, cap. 8. the words there are, *Et hoc per finem cum Domino Rege faciend. per transgressione, &c.* Here *cum Domino Rege* is intended the Court of Chancery or Kings Bench, and so is *perceptum Domini Regis*, in that Statute taken for the command of the Kings Court of Justice, and not for any other command of the King whatsoever.

Merton, cap. 3. *Dominum Regem* the Kings Court of Justice.

Marl. cap. 8. *Cum Domino Rege.* the Kings Court of Justice. *Perceptum Domini regis perceptum curie.*

The Law is cleare in these Cases, which are the very same in these words, with the Statute 5 *R.* 2. before named. Further, (because this objection seemeth great) I will give you one instance more, in a Statute latter then any of these, the Statute of 25 *E.* 3. an Act so highly and worthily prised, and much made use of at this time by the Kings Majesty, the words are these: *Ou si home levira guerre counter nostre Seignior Le Roy en son*, Realme, &c.

In miserecordia Domini Rex. 1. *curia Domini regis.* Statute enacts that Fine and ransome shall be made at the Kings pleasure intends the pleasure of his Court of Justice, not his persons pleasure.

Here the words (*Nostre Siegnior Le Roy*) are

are taken for the Lawes of our Lord our King, and by good judgement likewise as to me it seemeth, not for any leavying War against his Person, for that is included in the first branch of this Act; *Si home compasse ou imagine, &c.* The Lawes, and the Courts of Law or Justice intend the same thing, therefore I conclude the words; Our Lord the King must necessarily be meant in this Statute of 5. *R.* 2. the Kings Court of Justice, or the Lawes of his Court of Justice, to wit, His high Court of Parliament, who onely are the Judges of any crime committed in that Court, and no other inferiour Court, as hath been proved at large. Also this latter Statute of 6 *H.* 8. seemeth to conclude all Delinquents that have not Licence, as is before mentioned, although the occasion of their absence be great, and urgent affaires even in Law and conscience satisfactory. *6 Hen. 8. c. 16. A stricter law then 5. R. 2.*

Now to deny unto the Parliament the dispensation of Justice against Offenders in this kinde (as it is too apparent) and withall to protect them from the censure of that high and great Court, surely (I say no more) it is a violation of their Lawes and Rights unto them anciently belonging.

But that I may answer all Objections, it is urged by the adverse party, that their departure from the service of the Parliament was forced by tumults and disorders of people, not without just feare and perill of their lives, and therefore their absence not within either of the Statutes before *Object.*

named, but justifiable by the rules of all Law and Conscience.

Sol. To which I answer (because it seemeth materiall) that first it must be granted, that those Members so departing were Summoned to returne to the Service of the Houses, and their Answers (especially of divers of the House of Peeres) were to this purpose; That by their duty of Allegiance they were bound to attend the Kings Person, or that they were commanded to attend his Person, and therefore they held themselves excusable, which was in effect a plaine deniall; divers of which Answers I have seene in print. Now it must needs be inferred from hence, and it plainely appeares to any man not devoid of reason, That if there had been really any such danger or cause as is objected, they would have inserted the same in their Answers, and so reasonable and certaine an Argument of their innocency would not have been omitted; as on the contrary, so high and contumacious a defence would not have been returned, such an affront and contempt of Justice that even a Court of Pye-powders would not have suffered. Also see their Answers what they are, their Allegiance is the ground of them, as if their attendance on the Kings Person warranted them to doe injustice, to violate the Lawes of these Statutes before named; Is this their Allegiance to the King? Is not the Subjects Allegiance confined to the Lawes? Is not the very Etimology of the word

Nota.

word derived from thence? *Legiantia, quasi legis essentia*, therefore their answers not legall, as also the Objection of being driven from the Parliament frivolous, for then they would have made use of it in their answers. Further to question the word (Tumult) afore mentioned, doe numbers of people with Petitions, no way disturbing the Peace make in Law a Tumult? Certainely no; likewise it appeares by undeniable proofe, that some of them were sollicited away from Parliament by Letters, therefore the former allegation is idle.

Allegiance the Etymology.

Their answer not legall, because they infringe the law, viz. 5. R. 2 & 6. H. 8.

Tumult what it is.

For the Kings absence from the Parliament, in what condition it stands, I will offer you one of the ancient Lawes of that pious Prince *Edward*, Sir-named the *Confessor*, whose Lawes the Kings of this Nation at their Coronation sweare to observe and keep: the words are these rendred in English; The King ought to be present at his Parliament, unlesse he be hindred by sickneise, and then he ought to be in the same Towne where the Parliament is held, and his sickneise ought to be certified by twelve Members of the Parliament, a Committee for that purpose of the Lords and Commons. Here appeares no cause of his absence but sickneise justifiable, and of this he himselfe is not the Judge, it must be certified as you have heard. What, not perill of his life may some say? Is that no just cause of His absence? You heare the Law, I have nothing to say to questions.

The Kings absence from the Parliament by the ancient law how farre justifiable.

named, but justifiable by the rules of all Law and Conscience.

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The Kings absence from the Parliament by the ancient law how farre justifiable.

It seemes in those dayes there were no such unworthy and dishonourable thoughts in the mindes of men, as to doubt the security of Parliaments unto the Regall Person, since in judgement of Law, if Tumults or Disorders shall happen in the Commonwealth, Parliaments are best able to suppresse them, and to protect both King and people from injury and wrong. Now Parliaments are the bane of Princes, as they are now termed; they are now Cataives, whereas you see formerly they were the onely cures of all Diseases in the Body Politique. The King formerly not any where safe but here, now the King in His owne judgement safe any where but here, flying from them as from His enemy; when as it is not possible he should finde any where, that which he desireth but under God, even with them (peace and security.)

Be not deceived, Great Prince, neither flye them that pursue you, nor in any Hostile manner: The Parliament follow you with humble Declarations and Petitions for Peace, you mistake their sweet Compellations: put up your Sword into the Sheath, and let Peace be in our dwellings and amongst us.

I have a little deviated, I will returne unto my selfe; and I finde the King still absent, notwithstanding all that hath been spoken, and justifying the same. Indeed there is a Statute in the time of King *Henry* the 8 viz. 33. *H.* 8. *cap.* 21. by which in the Kings absence from Parliament, His

33. *H.* 8. ca. 21.

Assent

Assent by his Letters Patents under the Great Seale, shall be sufficient.

Here it may be alledged, that the Kings absence from Parliament is warranted by this Statute. Object.

I answer; This is nothing to make the ancient Law afore recited ineffectuall, for his absence here upon this Law standeth as it did before this Act, not touched or medled with by this Act, and therefore sickneſſe continues still a cauſe of abſence of the Kings Perſon from his Parliament, and no other, and where he might legally juſtifie his abſence before this Statute he may ſtill doe the ſame, and no other waies. And although that the uſe now of late times hath been, that the firſt and laſt day of Parliament is ſufficient, yet that is but uſe which is of no force againſt a Law in being, as I conceive. Further, His Aſſent by this Act is limited, it is onely to Acts of Parliament, and no other aſſent is warranted. Note alſo, that to diſ-aſſent to any matter tranſacted in Parliament, it giveth him no power at all. Thus you ſee, the Kings abſence from his Parliament how it ſtands by the ancient Law, of which I have an extract; as alſo by latter Law you have heard likewiſe, the abſence of the Members of the Houſes debated. Sol. Vſe of no force againſt a law. *Vi. infra.* *Ex libro de ordine Parliam. Editi, tempore Edwardi filij Regu Ethelredi.*

But we will (*Argumenti gratia*) admit their Allegation true, that they were driven from the Service of the Parliament by Tumults and diſorders, which no man will (the premiſſes conſidered) ſuppoſe, yet

the objection is ſtill frivolous, who ſhall judge them innocent or tranſgreſſors of the Law, ſhall not the Parliament? yes verily, as it is manifeſtly proved by the former diſcourſe, ſo that in the confutation of this, we doe but like *Syſiphi ſexum voluere*, labour in vaine with multiplicity of words to anſwer a meere falſe and nugatory ſuggeſtion.

Object. There is yet further oppoſition, and that is upon the Statute *6 H. 8.* before named, That the penalty of that Law is but loſſe of their wages in caſe any of the Members of the ſaid Houſe of Commons ſhall depart from the Service of the Houſe without leave of the Houſe accordingly as that Act hath appointed, and ſo with loſſe of their wages upon the point that Statute is ſatisfied.

Sol. To which I anſwer; Firſt, that Statute extendeth not to the Houſe of Peeres, neither doth it take away the mulct or penalty of any former Law or Statute made in that behalfe, but addeth a further puniſhment to the crime, abrogateth no former Law; ſo that Fine, Impriſonment, and Arbitrary Cenſure continue ſtill in their force: and to conclude this point, they are by one Statute or the other, or by both tranſgreſſors of the Law, and liable to the judgement of that ſupreme Judicatory.

6 H. 8. More penall abrogateth no former Law.

The proceedings of the Parliament not ſubject to any debate extrajudiciall, nor in any debate judiciall, but of it ſelfe.

Another right of Parliament is the ſole tranſaction of all matters even unto Judge-

ment,

ment, or the Royall Aſſent; the proceedings of this High Court being not ſubject to any extrajudiciall debate or cenſure of any other Court or Authority whatſoever, but onely of it ſelfe, and within it ſelfe having ſupreme Authority and Juriſdiction; and whereas I ſpake before of their power of preparing and tranſacting all matters unto the Royall Aſſent; I doe not intend the royall aſſent Arbitrary, for the royall aſſent cannot in Juſtice be denyed to any Bills preferred by the wiſedome of Parliament for the publike good; neither can any abſolute, negative voyce of the King in this nature be any prerogative to him juſtly pertaining, although by a Proclamation, bearing date at *Oxford*, printed not long ſince, his Majeſty claimeth an abſolute negative voyce in Parliament as his undoubted right.

The tranſacting matters unto the Royall Aſſent doth not intend the royall aſſent Arbitrary.

Negative voice no Prerogative.

And likewiſe in one of his Declarations he juſtifieth it as his right for this reaſon, That if he ſhould onely have a negative voyce in Parliament, in matters of Grace and Favour, and not in matters of right and Juſtice, then matters of grace and favour would ſoone be brought within the compaſſe of right and juſtice, if the Parliament ſhall ſo declare them, they would ſoone intereſt the Republike in them alſo, and ſo exclude him from any negative voyce at all.

Object.

To anſwer this I need ſay no more but this, That theſe are thoughts diſhonourable of a Parliament, to make the head and fountaine of Juſtice a receptory of ſuch impure ſtreames as theſe (injury and injuſtice)

Sol. Matters of right and Juſtice, and of grace and favour legally differenced.

Generall pardon how speciall.

Generall statutes not nationall or publike.

Arbitrary Government grounded upon the negative voice.

In inferiour Courts no negative voice, no voice at all.

justice) besides these matters are in Law plainely and perspicuously differenced in the one, viz. matters of Right and Justice, the whole Kingdome is concerned, not so in the other as being private or particular in their nature, as Bills of *Naturalization*, *Indenization*, grant of Franchises, or priviledges to Corporations or private persons, generall pardons or particular, for though the word generall be here used, yet it operates, but especially it extends onely to particular persons without you will make all the Kingdome delinquents unto Justice; it includes *genera singulorum* at the most, not *singula generum*. And so in Law divers Statutes are called generall Statutes, of which the Judges are bound by Law to take notice of without speciall pleading, and yet the Publique or the whole Kingdome are not concerned in them. For my part I shall need to say little herein, because it hath been formerly handled by others; also I take it to be a truth as cleare as the noone day, that upon this Structure all Arbitrary Government is founded and maintained, which position standeth not with a mixt and Politique Government, as this of our Nation is, but with a Monarchicall, where the will and pleasure of the Prince is a Law, as is known sufficiently to the learned.

But a little to examine this particular, and let us looke into the proceedings of inferiour Courts; Hath he there any negative voyce? It appeareth he is so farre from having any negative voyce, that he hath

no

no Vote at all, but the voyce of the Law pronounced by the mouthes of the dispensers thereof, the reverend Judges is that which obligeth both King and people, neither can it be disanulled by any verbill Command of the King, or any other extrajudiciall way, although under the Great Seale of *England*, although the Judgement be against the King himselfe. Nay further, I conceive the Law exerciseth a coersive power over all persons without exception, the King as well as the people, surely then the King hath no voyte negative, yea, the compultary proceedings were the same anciently, though now disused; that is to say, Writs issued forth against the King as against the Subject: I have seene good Authority in print, that the forme of the Writ in the times of *Henry* the 1. or thereabouts as I remember was thus: *Precipe Henrico Regi, &c.* the power of the Law was here supreme but of late times, it is now by way of Petition if the Suit be against the Kings Servants or incumbent, as in a *Quare impedit*, or the like, if judgement be once given (as it is usuall) the Kings right is bound, and you see withall it is by Writ in that Case; now if Judgement be given, surely even at this day the Judgement is not illusory, for every Judgement in its nature is an Act compulsary, *Et judicium redditur in invitum*, as the Lawyers say; for execution may be demanded upon this Judgement, and cannot in Justice be denyed, though against the King. These things thus premised

Judgement against the King by the positive lawes, and without all compultary.

miſed I doe reiterate my former queſtion, where is now the Kings negative voyce; ſurely in inferiour Courts he hath no voyce at all; come we then to the right Court of Parliament, Hath he it there? without doubt he hath it not. It is an Opinion exployded by all good men, unſound and rotten at the root if we but open it; for if he hath a negative voyce the Government is meerely Arbytrary; inferiour Courts may a while be refreſhed herewith, but the fountaine will ſoone dry up, and what then will become of the rivilets? If this may be defended *De Jure* to be done, that the King may deny his Aſſent to twenty Bills preferred unto him by the wiſedome of his Parliament for the Publike good, there will fall out a totall defect of Juſtice in a ſhort time, without God incline the hearts of Princes miraculouſly. And this admitted, how would it let looſe the reines of Government? for if there were no ſupplement of new Lawes, the old Lawes would ſoone expire, diſeaſes breeding in the Body Politique, even as in the naturall, requiring new Lawes, the miniſtration of new deviſed remedies to ſuppreſſe the miſchiefe, the which the Art of man cannot cure or prevent by proviſion of old Lawes; therefore for this very reaſon the Kings negative voyce is inconſiſtent with Government. Further, to what end is the Oath ſo ſolemnly tendred and taken by the Kings of this Nation at their Coronations? Is it meerely ſuperfluous, or is he bound

The reaſon why the negative voice is not conſiſtent with this governmt.

now

now, and is he presently loosed in his practise and government? How doth his negative voyce in Parliament and this Oath stand together, in which Oath he sweares to confirme those Lawes, *Quas vulgus elegerit*, which his people shall chuse, the true sence and meaning of the words extending onely to future Lawes, to be chosen by the people, as I take it cleare without all question, for to Lawes already established precedent branches of this Oath doe relate, else there must be a Tautology, which in an Oath penned with such wisedome and deliberation we must not conceive.

The King's Oath at his Inauguration against the negative voyce.

Some materiall words in this Oath explained.

The word (*Consuetudines*) joyned with the words of this branch of the Oath, objected by his Majesty in one of his Declarations, plainely to intend this branch of precedent Lawes onely, for Customes cannot commence at this day; is a word of large sence in Law, for Rents and Services due to the Lord are called Customes; besides, this word (*Consuetudines*) in this very Oath plainely pointeth out Lawes and Statutes, Franchises and Liberties: for, have the Kings of this Realme granted Customes in this sence to their people? as are the words of one branch of this Oath, they cannot be Customes, and yet have such denomination even at their very commencement as these words report, but of this enough.

Object.

Sol. (Merchandises) *vid. Mag. ca.* 30. Note that this word (*Consuetudines*) is also taken for Statute law, as *Contra consuetudinem communi concilio Regni edit. Co. Alt. f.* 5. 6.

Now the people here intended in this Oath are the High Court of Parliament, for where can the people make election of wholsome

The Commons are there representative, the Lords not so, but personally; that is the reason a Peere may make a Proxy, not the other.

wholsome Lawes for themselves but here, where they are representatively assembled? for no legall Assembly or Convention *totius populi* can any History record, or antiquity of this Nation ever mention, but this convention of Parliament. I will say no more, in a truth so cleere, to every capacity plaine and obvious; but people dis-affected clamour much, and say, How can this be, since the Kings dignity is above all Law, his presence suspends the Law, and surely if he may suspend the Law by his presence, and that a Law already made, and in being, then surely he may deny efficacy or force to any Law not in being by an explicite Act or deniall of Assent; for the former case is but implicite, and for proofe of this

Object. they may object that ancient Case of Law, That a Villaine, in whom his Lord hath both in person and estate, the inheritance, the absolute and free disposition of him by Law, so he doth not maihem him, if in the presence of the King he is a free man, he cannot be seised by his Lord, but it is for the time an Enfranchisement.

Sol. To which I answer, that this Case is ancient, and the Law in this particular is antiquated, not abrogated; howsoever it is pertinent to our present purpose: I say this Case stands upon its particular reason, for the Kings presence is a sufficient Protection in favour of liberty against the Lord, who doth not *agere civiliter* against his Villaine, that is to say, claime him in a course of Justice, for then if he proceed

in

in a judiciall way, where the power and authority of the Law appeares, as he may, then I conceive the Kings presence is no protection, but it is like the case of a man upon an Execution awarded against him, who flyeth into the Kings presence upon a *Capias ad satisfaciendum* directed to the Sheriffe; for in that Case I take it, the Law is plaine, the Sheriffe must with the power of the County (if needfull) apprehend him, and if he returne the especiall matter unto the Court without executing the Writ, the returne of the Writ in this case is not good; and if the party escape, the Sheriffe is subject to an Action at the Suit of the party, who is damnified thereby.

The Kings presence no Protection against the power and execution of the law.

Thus I have done with this particular, I meane the negative voice, and if there be no coersive power to rectifie the abuse of Authority Regall, as some would have it, yet it remaines still a transgression from the rule of Truth and Justice, and that is all that I desire at this time to prove. If there be no limits for the impetuous waves of the proud Ocean, God hath appointed the Sands to stand up, and choake them. Loe here God and Nature against exorbitant power, but of this sufficient. There yet remaineth the last part of this Priviledge afore mentioned a little to be spoken of, viz. That the proceedings of this High Court are not subject to any extrajudiciall censure or debate, wherein I will briefly parallel this with the proceedings in inferiour Courts, whete you shall finde, that they

The proceedings of Parliaments paralleld with the proceedings of inferiour Courts.

they are not so much as to be retarded or delayed by any verball command of the King, their judgements binding all, untill by legall course reversed; no man, no not the King himselfe authorized to question, much lesse nullifie their Acts in any extrajudiciall way; so much ought the Judgement of the Law to be had in reverence.

The King cannot retard Justice but in a legall way.

The King cannot warrant the absence of any man in his service, either by any verball, or Certificate by Letter to the Court of Justice, but it must be done legally by Writ under Seale; or otherwise it will turne to a default, he cannot retard Justice but in a legall way. And what is extrajudiciall debate or censure, but a retarding of Justice. If Judgement be given against the King, he cannot examine this judgement in an extrajudiciall way before himselfe, but it must be subject to censure or debate in a legall way, by Writ of Errour or the like; I need say no more for the proofe of this. I will present you with the great Majesty that doth attend the administration of Justice, and that is this; An Offence committed in the presence of a Court of Justice, is a greater Crime and more Capitall then in the presence of the King; killing the Chancellor or Judge of either Bench doing his office is High Treason, by the expresse words of 25. E. 3. not so, if from the Bench, though in presence of the King, striking any man in *Westminster Hall* in presence of the Courts of Justice, is the losse of a mans right hand, and his goods

An offence committed in the presence of a Court of Justice, great and more capitall then in the presence of the King.

goods and chattels, not ſo in the Pallace or preſence of the King, unleſſe blood-ſhed enſue upon it, and that is ſpecially by Statute, not by common Law; but becauſe I have touched upon this before, I will returne to the diſcourſe intended.

It is manifeſt, that the Law is the ſquare and rule by which both King and people are directed, and regulated in inferiour Courts; What ſhall we then ſay to the high Court of Parliament, in compariſon of which, all other Courts are but *Tanquam viburna cupreſſo*, like ſhrubs to the lofty Cypreſſe or Cedar, from whoſe fulneſſe and abundance all other Courts receive even their power and authority.

There is an enemy at hand, a ſtrong objection, and that is, that this is no Parliament, they have no plenitude of power without the King, and the reſt of the Lords and Commons now abſent, and by this they thinke to invalide all that hath been formerly ſpoken. Object.

To which I anſwer, That firſt the Parliament muſt be admitted to be a Court of Juſtice, without the Kings Perſonall preſence, his legall preſence being inſeparable from this Court, like as from all other his Courts of Juſtice; and the contrary I ſuppoſe no man that is rationall will affirme. Further, I conceive in inferiour Courts his perſonall preſence is againſt Law in point of Judgement in any matter between the King and his people, for then the King ſhould be Judge in his owne Cauſe, contrary Sol.

Ministeriall or judiciall Acts not incident to the Regall dignity.

rary to the rule of Law, which saith, That the King cannot doe any Act ministeriall to himselfe; as to take a Recognizance *pro securitate pacis*, or the like, much lesse doe any Act judiciall betwixt himselfe and his people; yea not onely so, but he might sit in one Court, and reverse a Judgement given against himselfe in another Court; which how injurious this same would be unto the subject, how dishonourable and scandalous to the Court of Justice, I suppose the weakest capacity doth apprehend: Therefore the wisedomes of the Realm hath appointed the sage and learned men, being sworne to administer Justice indifferently betwixt the King and his people. And the Opinion of *Fineaux* chiefe Justice in the time of King *Henry* the 7. That all administration of Justice was at first in the Crowne, is to be understood with this distinction, it was not in the Regall person, as to the dispensation of it, but it was in the regall Ministers or the Judges, and so might be said to be in the Crowne, according to the rule of Law, *Quod per alium facit per seipsum facere videtur.* If so in inferiour Courts, the same law must needs sway in that high Court of Parliament also, the practice and course of that Court sheweth plainely, that they are a Court of Justice, without the personall power of the King. Witnesse their reversing of sundry judgements given in inferiour Courts, damning illegall Patents, Monopolies granted by the King, and many other

Court of *B. Le R. & C.* Courts of Justice time out of minde, and *Magna Carta*, ca. 10 did not reare and constitute the Court of *C.B* it did only settle it in *Loco certo*.

No Courts of Justice at the first in the hands of as now, but all dispensation of Justice in the Crown, viz. by the Kings ministers.

might

might here be remembred. I have heard it formerly objected, that the House of Commons could not take a Recognizance *Pro securitate pacis* of themselves, but it was alwaies transmitted to the Lords, therefore this House was no Court of Justice, for this is incident to every Court of Justice that is, of Record; yea a Commissioner of *Oier* and *Terminer*, may take a Recognizans as it seemeth, and for proofe, the Case in the 1 *H.* the 7. 19, 20. is urged, for there it is expresly said, That the transcript of a Writ of Error upon an erronious Judgement in the Kings Bench shall be brought into the House of Peeres, *Et per Dominos tantum, & non per communitatem assignabitur senescallus qui cum Dominis spiritualibus & temporalibus per concilium Justiciar procedet ad errorem corrigendum.* Hence it seemeth that the House of Commons of it selfe cannot examine any Judgement in inferiour Courts, and therefore should seeme to be no distinct Court of Justice of it selfe. As also that the House of Commons considered in relation to that joynt power of Judicature, that it hath with the House of Lords, cannot take a Recognizans as is before objected, for so it may seeme to be implyed by this Case.

I answer, because the weight of this objection seemeth great, that this Case may be admitted for Law, and yet the power of that High Court of the House of Commons no whit diminished; for this Case must be intended of their joynt and Sol.

Courts of Justice have no immediate cognizance of each others proceedings, but they must be certified hereof and that in a legall way.

Certificate implies no immediate cognizans.

entire power of Judicature, for otherwise the House of Lords could take no immediate cognizance or knowledge of the proceedings of the House of Commons, nor *è converso* the House of Commons of the proceedings of the House of Peeres, but their proceedings ought to be legally certified, and by the words in this Record you may see it was done, in relation to that joynt power, for the words are, *Per Dominos tantum & non per communitatem, &c.* Here the Commonalty must plainely be intended as member or part of that High Court, or otherwise the words were meerely nugatorys; for what need this restriction if the House of Commons were not conjoyned with the Lords in entercourse of Justice, but were a distinct Court and severall from the House of Peeres; it were as much as if the Kings Beanch should be restrained from having any immediate Jurisdiction or Cognizans in matters pertaining to the Common Pleas, a thing ridiculous and superfluous, seeing by Law they are meere estranged from any knowledge in this nature of any proceedings of each other interlocutory, untill judgement given, and then it must legally be brought before them; so that this Case is clearely meant of their joynt power, wherein by custome (as saith Sir *Edward Cooke*) the Lords only proceed to reverse or affirme any Judgement upon errour, no whit diminishing the Power and Authority of the House of Commons by this, for divers matters may

Jurisdiction of Courts.

by

by cuſtome be ſeverally tranſ-acted by Perſons having the ſame power and authority, and yet they are in Law tranſ-acted by all the Members or Judges of that Court repreſentative. But I doubt not but the tranſcript of any Judgement in the Kings Bench may be commanded, and that legally too into the Houſe of Commons, and that they may proceed thereupon either to affirme or reverſe the Judgement, and that by the power of that high Court, as a ſeverall and diſtinct Court of Juſtice from the Houſe of Peeres, & this Caſe before remembred to be good Law notwithſtanding, but this I leave to the learned.

Tranſaction by one done, by all repreſentative.

How the opinion of Sir *E. Cooke* formerly is to be underſtood, viz. according to their joynt power of Judicature.

Now concerning the Recognizance before touched, there is nothing expreſſed or implyed in this Caſe, but that the Houſe of Commons, as a ſeverall and diſtinct Court of Juſtice of it ſelfe may take a Recognizance, there is no queſtion of that, for every Court of Record have that power unqueſtionably, yea, derivative Authority from Courts of Juſtice, as Commiſſioners of *Oier* and *Terminer* are inveſted with this Authority. Further, the Houſe of Commons conſidered in relation to their joynt power, may take a Recognizance, for ſo ſaith good authority, that reverend Judge *Brooke*, in abridging the ſaid Caſe of 1 *H.* 7. before cited, *Videtur quod tout un* are his very words; beſides, if there hath no ſuch practiſe been or uſed in the Houſe of Commons, that is no proofe, it is no argument from a *non eſſe* to a *non poſſe*; an hundred preſidents

The Houſe of Commons may take a Recognizance as a diſtinct court of Juſtice.

The Houſe of Commons may take a Recognizance according to their joynt power.

Sub silentio make not a Law, it was never yet upon conteſtation ſo determined, but of this ſufficient. Thus I hope I have cleared this falſe aſperſion, it plainely appearing that they are a High and Supreme Court of Juſtice, joyntly and ſeverally without the Kings perſonall preſence.

The Aſſembly at *Oxford* no Parliament.

There hath of late been an Anti-parliament (for ſo I may terme it) erected at *Oxford*, whereby they had thought to have weakened the power of this Parliament, by Voting their proceedings as traiterous and illegall; but alas theſe are poore ſhifts and evaſions, ſeeing there is an Act, unto which they themſelves this very Seſſion have aſſented; by which it appeares, this Parliament cannot be held, proroged, or adjournied elſewhere without the conſent of both Houſes of Parliament now aſſembled; ſo that this Aſſembly at *Oxford* is no Parliament, and conſequently their proceedings a meere nullity in judgement of Law, and withall ſubject to ſevere Cenſure, in regard they have aſſumed to themſelves the Supreme Authority of the Kingdome without any warrant of Law ſo to doe: and that ſpurious generation of Baſtards, or illegitimate Children, which ſeeke to ſever and divide the Power and Authority of this High Court, by affirming any legall preſence of this Aſſembly elſewhere; the wiſe *Salomons* of this Parliament will in their due time bring to condigne puniſhment.

Well then, they being in Parliament,

and

and a high Court of Juſtice without the Kings perſonall preſence, what queſtion can be made of their power, even as a Court of Juſtice to conſtraine and compell all perſons, yea even by force of Armes, to ſubmit to their ſupreme Authority; and in caſe of reſiſtance, if inferiour Courts may command *Poſſe Comitatus* to execute their Proceſſes and Injunctions, as it is manifeſt they may, for in one common Caſe of *Replevin* from the Court of Common Pleas, the Sheriffe of the County as Miniſter to the Court of Juſtice, if the party that hath taken a Diſtreſſe carry the ſame to a Fort or Caſtle, to the end it may not be replevied, he may command the power of the County to attend him, and abate that Fortlet or Caſtle in caſe of reſiſtance, delivering by *Replevin* the Cattell to the owner. Surely then the Parliament in caſe their Power be contemned and diſobeyed, may command *Poſſe Regni*, and not onely *Poſſe comitatus*, to bring all perſons rebellious unto the Juſtice of that High Court, there to receive according to their merits. And this is the caſe of this preſent Parliament (as I take it) who have legally Summoned the Members of both Houſes now abſent, to attend the Service of the Houſes, and they have not appeared, but abſolutely refuſed to obey the Summons, Proceſſe, and Power of that Court; which for my part, what offence it is, and where Cenſurable, I leave it to the world to judge upon, what hath been formerly ſpoken, there

Inferiour Courts may command *Poſſe comitatus*.

being no absolute case of necessity to plead for their absence (as I could ever yet perceive) and the Lawes and Statutes of this Realme being peremptory in the mulct and penalty thereof.

The Kings presence representative by 33. *H. 8. supra.*

Now peradventure it is necessary to know in what the Royall Assent Personally or Representative is required, and that is plaine, in enacting any Law or Statute to make it perpetuall to oblige the people; I conceive the Royall Assent must precede, yet the Royall Assent cannot in Justice be denied, neither with a *Le Roy s'aduisera* suspended, unlesse satisfactory reasons be given for the same unto the Parliament, for the publike good, as also the confirmation of them is no act of transcendent grace, but of right and Justice, as hath been formerly spoken.

The power of the Parliament to make Ordinances paralleld with this power in inferiour Courts.

Nay further, it must be granted that as incident to this great Court, they may make Ordinances to binde the people, *Sedente Parliamento* without any royall assent, unto which Ordinances, although not grounded upon the positive Lawes of this Kingdome, the people ought to yeeld obedience as well as to the Ordinances, Orders, and interlocutory Judgements in other Courts of Justice, untill definitive or finall Judgement, which is for the most part in *Plena curia* when the Court is full, but that other power is used, although but part of the Court be then sitting, and bindeth all persons untill finall Judgement; it is also plaine, that in other Courts their

Ordinances binds untill definitive Judgement, though not transacted in *plena cur.*

Orders,

Orders, Ordinances, and interlocutory Judgements are not grounded alwaies upon the positive Laws, but upon intervenient accidents, arising upon materiall circumstances of time, place, or other emergent causes, which Orders are held by the Sages of the Law agreeable unto equity and Justice, although no expresse Law to warrant the same. In Chancery many crosse Orders, the one to the other in a cause there depending, yea almost seeming contradictory, yet in Law and conscience justifiable; and he that shall disobey those Orders is accounted a rebell unto the Law, the King, and his royall Government, as appeareth by the Writ of Rebellion usually in those cases issuing; and Sir *Edward Coke* affirmeth, this power of Ordinance antiently pertaining to this high Court of Parliament.

Ordinances binding though not grounded upon the positive Lawes.

Jurisdiction of Courts title Parliament.

And I know not but they may proceed to definitive Judgement in Causes notwithstanding any thing that hath been formerly spoken, if any Members of the Houses, who are by Law Judges of this high Court, shall refuse to discharge the trust committed unto them, as the case now is, and wilfully by absence or delinquency make themselves uncapable and unworthy of that great service, for then I conceive it cleere that the Court is full in Judgement of Law without them; and under favour, there is no Law in point, but the remaining Judges may proceed by the same authority. For to examine a little the course of inferiour Courts of Law, if any one or

The Power of Parliament to proceed unto finall Judgement in case of wilfull absence of any the Judges of this Court paralleld with this power in inferiour Court.

The Court full in Judgement of the law without those Judges which are wilfully absent.

two of the Judges of the Kings Bench, or Common Pleas, shall obstinately recede from that Court, and deny his attendance there for the publike, shall not the residue of the Judges transact all matters there depending? Certainely they may, and further they ought so to doe. And although for conveniency or conformity, or to the end the Judgement may be the more unquestionable being confirmed by the greater number, the weighty matters are agitated and determined in *Plena curia* for the most part, yet I take it cleere in case of absence, especially wilfull or obstinate, the remaining Court may debate and finally sentence all matters incident to their jurisdiction. Indeed in some particular cases, the chiefe Justice or Judge hath formerly had the sole power as concerning Writs of Errour, viz. that the warrant for the issuing out the Writ of Errour to the Chancery ought to be under the Teste of the chiefe Justice of the Kings Bench, but that Case or any of the like nature I conceive are only ministeriall; but if a Writ be once returned in Court, and so the Cause there depending, no doubt the remaining Judges may judicially heare and determine. Now if so in these lower Courts, we cannot diſ affirme the same in this eminent Tribunall the Parliament, the Court being the moddell and patterne of all other Courts, the Gnomon that points out the course of the Sunne, the course of Justice and equity to all the other Courts, there being no brightnesse or lustre

No judiciall but ministeriall acts by law transacted solely, by any one Judge in inferiour Courts. *vid. Supra.*

of

of Juſtice in inferiour Courts, but reſides more fully and more aboundantly in that high Court of Parliament.

So that I conclude, the Parliament may make Ordinances, Orders, give Judgement and Sentence definitively in all matters whatſoever, without the Kings perſonall preſence, or any of the Members of either Houſes, their abſence being ſuch as is formerly declared, and that upon the reaſon of Law in theſe rivulets of Juſtice, their latitude of power, and the ſuperlative authority conſidered in themſelves and in their courſe of proceedings, being not ſo much as intended to be here mentioned, but onely by way of compariſon or reſemblance of the Law in inferiour Courts, to make things more conſpicuous, not any waies to diſhonour this Court, as if it ſhould *emendicare juſtitiam*, begge or borrow the rules of Juſtice from inferiour Courts, who are but *tanquam ancillæ*, like handmaids to this Lady and Queene of Juſtice; as alſo it is done *ea intentione* to informe vulgar capacities *per notiora nobis*, by things even ſubject unto ſence, to the end they might (if poſſible) be ſatisfied.

I ſhould now enter into the proofe of the violation of this priviledge, almoſt forgotten by this digreſſion, namely the tranſacting of matters belonging unto this high Court, by the new erect and pretended Parliament at *Oxford* a greater violation in this particular, then if any inferiour Court of Juſtice in this Kingdome had aſſumed or arrogated

The Assembly at *Oxford* unwarrantable by law even in their Session, much more in their proceedings.

arrogated this authority, because this Assembly at *Oxford* have not so much as any colour of Law to warrant even their Session, much lesse their proceedings; the matters there transacted and adjudged in derogation and dishonour of this high Court, being so many and numerous; as also the extrajudiciall arraignement of the Votes and proceedings of this Parliament, but I thinke it is manifest to all the world, and no man ignorant thereof.

The many and weighty Remonstrances, Declarations, and Ordinances of this high Court declared, and pronounced *null* and void at *Oxford* and elsewhere, by Declarations of his Majesty extrajudicially framed. Much might be spoken herein with much sorrow, and peradventure not without offence, therefore I will desist, and close up my meditations on this particular, protesting nothing but the delivery of the truth with meekenesse and moderation; and my soule is full of heavinesse and lamentation, that ever so unhappy an occasion should be ministred, I beseeching God (if it may stand with his Will and Pleasure) to heale all our wounds, and to reconcile all differences with peace.

There is another right of Parliament yet behinde, which requires me not to be silent, as being of all one of the chiefest; by breach of which, the Sword is gone through our Land, Armies of men have been raised, whereby not only violation of Lawes, Rights, and Justice, but even the destruction of

of all is at hand, unleſſe God in his mercy prevent it. In briefe, we have ſeene great forces raiſed and maintained by the King, without any Law or authority to warrant the ſame, being (as I ſuppoſe) miſinformed and unadviſed herein, it being directly againſt the right and power of Parliament which is this; That no Armies of men can be raiſed by the King, or any ſubordinate authority under him, but as the poſitive Law hath preſcribed, unleſſe by conſent of Parliament. And here peradventure it will be expected I ſhould ſpeake of the *Militia* of the Kingdome, as being a matter at this time of the higheſt concernement, but I will referre it to a diſtinct debate by it ſelfe, as you ſhall perceive hereafter in this diſcourſe; and here onely that part of the *Militia* that hath relation to the poſitive Lawes, I will open unto you, and ſhew you even here the tranſgreſſion of the Law poſitive, it being not onely againſt the ancient Law of the Land, but likewiſe againſt a Statute, unto which his Majeſty hath given his Aſſent this very Seſſions of Parliament.

The Priviledge or right of Parliament.

The *Militia* abſolute or generall, *Vid. infra.*

The *Militia* poſitive, or by the poſitive Law limited.

The ancient Law of this Land is mentioned in the Preamble of this Statute, viz. That none is compellable to goe out of his Shire to the Kings warrs unleſſe it be in caſe of neceſſity, of ſudden comming in of ſtrange enemies into this Land, as ſome Statutes recite the Common Law; and other Statutes [illegible] out the word (neceſſity) in the recitall of the Common Law, but it is not ur, . at

An Act for the releese of *Ire-Land*.

at all materiall, as you shall see hereafter. The body of this Statute is for the releese of *Ireland* against those Popish Rebells, who in a short time have made a populous and rich Kingdome even almost desolate. You have heard the Common Law, which was to secure the Kingdome in case a Parliament could not so speedily be called for the defence thereof; but it is plaine, that hereby is intended, that no man is compellable to serve the King in his warres, against the representative Body thereof, for that is not for the defence of the Land, but for the ruine thereof, they being in no case to be conceived enemies unto the King, or the Realme, but as the supporters, pillars, and maintainers of all justice, and peace in this Common-wealth.

(Of necessity) some Statutes recite the Common Law thus, others not.

The Common law now in force touching the *Militia* extendeth onely to Tenures or Contracts.

It appeareth by this Law likewise, that none are compellable to goe out of their Shires to the Warres, although a suddaine incursion of strange enemies, but onely those which are bound by Tenure or Contract, and that none others can be forced to serve the King in his warres, unlesse by grant of Parliament; and this appeareth evidently by the Statute of 4. of *H.* 4. 13. a very weighty and worthy Act for our purpose, for that Statute reciteth and confirmeth all the Statutes formerly touching this particular, as namely, 1 *E.* 3. 5. 18. *E.* 3. 25. *E.* 3. which said Statutes recite the ancient Common Law, and this Statute with the others are but declarat[illegible] the Common Law, so that open resistance of

The statute of Winchester seising downe an Assize for Lands and goods, and that without relation to Tenures or Contracts is now not in force. *Vid infra.*

this Statute, you open the Common Law, and Statute Law touching this particular. Now it appeareth plainely by the exception in this Statute, and by the exception likewiſe in the Statute of 25. *E.* 3. that none ſhall be charged to finde men of Armes, but onely thoſe that hereunto are bound by Tenure or Contract, for the exception alwaies is parcell of the premiſſes, and relateth in Judgement of Law thereunto, therefore the enacting part of theſe Lawes muſt be onely meant of Military ſervices, in reſpect of Lands holden by ſuch ſervices or devories, and no otherwiſe; unleſſe you will make the exceptions (which are as it were explanations of the mindes of the Law makers) meerely frivolous. It appeareth thus by the meaning of 1 *E.* 3. *cap.* 5. before ſpoken of, that the Common Law recited, muſt be intended onely of Tenures or Contracts. And further, theſe words (otherwiſe then hath been done or uſed in times paſt for defence of the Realm) doe partly relate to the Statute of Winchester, which Statute ſets downe the Aſsize or proportion of Armes for Lands and goods, and withall is but declaratory of the Common Law or Statute in this, but it proportions the finding of Armes in a way compulſary, which before was not ſo, ſo that you ſee the reſult of all is this; none but thoſe which are bound by Tenure or Contract are compellable to ſerve the King in his warres, within the Kingdome or without, and that they onely in caſe of ſuddaine

4 *H.* 4. 13. The exception of Services and Devoires other then Millitary was not of neceſsity, but to ſatiſfie thoſe who were not ſo conuſsant of the lawes, for ſure they had not been included, the ſtile of the Act, is of millitary ſervices onely.

Nota. The exception is of ſervices due by Tenure, therefore ſo muſt be the body of this Act intended. This Aſsize was ſome ancient law antiquated or not in force, revived by Winchester, but Winchester being repealed this Aſsize is of no force.

Rebells are not enemies as the words of the common law are

suddaine invasion, so that it may be further urged upon this Law, viz. (the Common Law before recited) that not onely against the Parliament, but even to suppresse any private insurrection or rebellion of the Subject within the Kingdome, the King cannot force the Subject out of his Shires for the words are as formerly you have heard them, unlesse in case of suddaine comming in of strange enemies, &c. and to make the vigour and force of this Law, without doubt such is the judgement of this Parliament in recitall of this Law as you may perceive. Sir *Edward Coke* seemeth in his *Institutes* to say, That he that holdeth his Lands by Escuage, is bound to attend the King in his warres out of the Realme, contrary to this Law formerly recited; but his meaning must either be intended where the Tenure is expressed to that purpose, as to goe in *Scotiam, Hiberniam, Vasconiam*, &c. and then it is nothing to impeach this Law, as being intended of generall Tenures by Knights service, &c. or otherwise if his intention be also of a generall Tenure by Knights service, such as draweth unto it Escuage, yet if the Tenant atten-

Instit. Sect. Littleton. The Tenure of those that hold by Escuage explained. (This law) viz. the common law recited in 1 *E.* 3. 5 Service by Escuage to be performed out of the Realme.

Sir *Edw. Coke, ibid.* 1 *E.* 3. *ca.* 5. good law, none shall be forced, &c. for Escuage, or forraine service is not compulsory by the positive law, but by Parliament; Sir *Edw. Coke, f.* 69. perhaps is misprinted in these words (if the Tenure be to goe into *Wallia, Hiberniam, &c.*) and the words should be thus (if the Voyage Royall be to goe, &c. I leave it to the judicious.

The Law may seeme to include a generall Tenure by Knights service, as a speciall (as to me it seemeth) but if so, not materiall since *Nulla sequatur pena* Sir *E. C. f.* 69. in his *Institutes*, where he saith, that (*Scocia* is put but for example, seemeth to incline that the law is intended of a speciall Tenure.

deth

deth not *Nulla ſequatur pena* by Law, untill the penalty of Eſcuage for non attendance be aſſeſſed by Parliament, ſo that you ſee upon the point the Common Law formerly recited is ſtill in force, viz. That none are bound to attend the King in his Warres, either within or without the Realme, unleſſe in caſe of ſudden invaſion, unleſſe by their Tenures, if by their Tenures bound to attend him in forraine ſervice (as that is not cleerely granted) yet you ſee no penalty enſues for default thereof, unleſſe the high Court of Parliament impoſe it, a preſident of which Eſcuage aſſeſſed, we have not had ſince 8. *E.* 2. no ſuch ſervice penall or compulſary without Parliament, which is in effect as if you ſhould ſay, No ſuch ſervice at all without conſent of Parliament.

Service not compulſary, in effect no ſervice.

But I will leave the Common Law (I hope) vindicated from all objections, and come we to the Statute it ſelfe; and that is, that ſuch number of Souldiers ſhall be impreſt in all Counties of this Kingdome by the Committees for that purpoſe, as ſhall be appointed by the King and both Houſes of Parliament. This is the ſubſtance of the Act, if not the words, and here you may ſee this Statute is tender of the ancient Birthright and freedome of the ſubject, for it reciteth it, and withall maketh but a temporary proviſion for Ireland, which occaſion ceaſing, the Common Law hath its force

The ſtatute for the releeſe of *Ireland* but temporary.

The Common Law onely in force for the *Militia* of thi. Kingdome againſt all perſons except the high Court of Parliament. *Vi. infra.*

againe,

againe, ſo that as to the Realme of *England* and elſewhere except *Ireland*, the Common Law hath its force, and is at preſent effectuall againſt all power and authority either of the King or Subject, but only the ſupreme authority of Parliament.

Object. But it may be hence objected, that ſince this Act extends onely to *Ireland*, therefore the *Militia* for the ſervice of this Kingdome reſts as it did before, not within the letter or ſence of this Act.

Sol. I anſwer, if we ſhould admit this which for Argument ſake we onely doe (there being ſomething to be gathered by implication from the words of this Law, touching the power of the *Militia*, as appertaining to the Parliament) then the Common Law formerly recited muſt rule us; and here it is ſaid, The Common Law, That none ſhall be forced out of their Shires &c. is intended without wages, and therefore if they have pay or wages they may be legally compelled by the King to attend his ſervice in the warres, and ſo are the Statutes of 1 *E.* 3. 18. *E.* 3. and divers others, and the opinion of that reverend Judge *Thirninge* in the time of *H.* 4. is ſo to be intended.

(Implication) for ſure the King would not have joyned in an Act, if he might have done it legally before.

Object.

Sol. I anſwer, firſt, if this ſhou'd be granted, it is a ſtrange and dangerous way to expound Lawes and Statutes, and to inlarge the meaning of the Law-makers with an *Innuendo*, a thing not permitted even in private affaires, much leſſe to be allowed in generall and publike lawes, viz. That they ſhall not be

No (*Innuendo*) in private affairs much leſſe in Acts of Parliament allowable.

be forced out of their Shires, &c *inuendo* without wages, by this course Lawes and Statutes shall be wrested, and made a nose of waxe, capable of any forme or exposition; but there is one great reason which will make this Objection but meere cavillation, if I have not satisfied it already, and that is this; That one Session of Parliament, viz. 1 *E.* 3. confirmes and makes both these Lawes. 1 *E.* 3 *ca.* 5. recites the Common Law before remembred, and confirmes it too, 1 *E.* 3 *ca.* 7. and all other Statutes relating to this Law have these words, or to this effect: That Souldiers (*a*) impreſt by the King (*b*) Commission for *Scotland*, or *Gascoigne* shall have wages, the one Statute is generall in the negative, That they shall not be forced out of their Shires either with wages or without, as the sence is plaine to any rationall man. The subsequent Law saith, That the Kings souldiers shall have wages, so that having wages allowed they may be compelled to serve. Here seemes repugnancy of contradiction may be said.

1 *E.* 3. *ca.* 5 7. explained. 18. *H.* 6. 19. 7. *H.* 7. 1 3. *H.* 8. 5.

Or forreine service. 5. 1. *E.* 3. 7.

(*a*) Impreſt, viz. Forreine service not compulsary by the law positive, penall by authority of Parliament. *Vt supra*, 1 *E.* 3. *ca.* 7. may be also intended of the Impressing that *Militia*, that was not hereunto bound either by Tenure or Contract; both branches of the *Militia* intended by this law, legally raised or impreſt, 1 *E.* 3. *ca.* 7. intended most especially of that generall and more absolute power of the *Militia*, nee of the positive *Militia*, viz. of those that were bound by Tenure, &c. (*b*) The word (Commission) in the statute of 1 *E.* 3. *ca.* 7. must be intended, Commissioners derived from the authority of parliament, not any other regall Commission; so forreine service might be compulsary, even of those that were bound by their Tenures, viz. by such Commissions.

To reconcile this, and to manifeſt to the world the honour and wiſedome of a Parliament, notwithſtanding any aſperſion; by the rule of law and reaſon you muſt make ſuch expoſition of any Law as in all parts may be operative and effectuall if it may be, and that each Chapter of a Seſſion of Parliament may have their germine and proper operation; why then theſe Statutes *Ex viſceribus actus* (an excellent way of expounding Statutes, by comparing and conferring one Statute with the other) are thus to be intended, viz. That 1 *E.* 3. *ca.* 5. and 7. are Statutes differing in matter and ſubſtance, the one not having any relation to the other, though they may ſo ſeeme upon the firſt view, for 1 *E.* 3. *ca.* 5. extendeth onely to the *Militia* limited by the poſitive Lawes, *cap.* 7. to the *Militia* impreſt by authority of Parliament for forreine ſervice, which could not legally be done without this authority, as you have formerly heard, and ſo the one doth not croſſe or oppoſe the other (which of neceſsity they muſt doe, if other conſtructions be made) for they treat of ſeverall matters, and the ſence of Law makes a great diſparity betweene them, though there be a ſound of words ſeeming otherwiſe; ſo that 1 *E.* 3. *ca.* 7. is thus to be intended. The Kings Souldiers going in forreine ſervice ſhall have wages, viz. The Kings ſouldiers legally raiſed by authority of Parliament, and ſo there is no violence offered either to the letter or ſence of either of theſe

1 *E.* 3. *ca.* 5. & 7. Statutes differing in matter and ſubſtance.

Lawes.

Lawes. That which is printed in *Calvins* Case, a famous Case well knowne to Lawyers, was but the argumencs of Judges, no resolutions in this particular, and if they had been resolutions they had been erroneous, as it is manifest by what is formerly spoken, and by the judgement also of this Parliament, in reciting the ancient Common Law in this particular in force even at this day.

The power of the *Militia* to be implyed by the King in Forreine service with wages, printed, in *Calvines* Case denied for law.

Much labour hath been spent in one of the Kings Declarations to put in (or) for (and) in the Statute of 1 *E.* 3. which recites the Common Law, and to extend that Statute, and the Common Law likewise to home defence, but the truth of it is, there is neither (or) nor (and) in the Statute of 4 *H.* 4. which is a weighty Statute, and recites the Common Law in this particular, and the Statutes confirming it, for the words of this Statute are, None shall be forced out of his Shire to the Kings Wars, unlesse in case of necessity of suddain comming of strange enemies into the Realm; thus you see all passages cleared. His Majesty in one of his Declarations saith, That he yeelded more willingly unto this Act for releefe of *Ireland*, it being no matter of home defence but forreine, as being also formerly controverted how groundlesse the controversie was on the adverse part for disposition of the *Militia*, for forreine service by the regall authority, you may see by what hath been formerly delivered.

No necessity but forreine invasion upon the Common Law or the Statutes.

Forreine service by statute, this Parliament enacted a *statute* Home defence.

Also we may reason thus upon this

Statute, viz. The Statute for releefe of *Ireland*, that if no forces can be raised by the King for the defence of a forreine Kingdome, though subject to the Crowne of *England*, *a fortiori*, they cannot be raised for home defence without consent of Parliament, and certainely if they might be raised, they must be maintained, and what provision hath the Law made for them, verily even none at all: then it followes, that Armies of men illegally raised must be illegally maintained, that is to say, By rapine and oppression.

Object. Commission of Array.

But it is objected, That the Kings forces are raised legally, viz. by a Commision under the Great Seale, commonly called *The Commission of Array*; to which I answer, That *the Commission of Array* is against the fundamentall Lawes of this Realme, and is neither warranted, neither by Common Law or Statute, or president of former times, it being against them all directly forcing men to goe out of their Counties, as it is now put in practice, against the ancient Common Law formerly remembred, and to finde Armes contrary to the Assize limited in the Statute of *Winchester*, and subjecting mens bodies and estates to imprisonment, and other penalties inposed by Commissioners for refusall, things not warranted by any Law.

Sol.

Object.

But it is urged, That the Law of 5 *H* 4. a Statute not in print, upon which his Majesty grounds his *Commission of Array* is in

force.

force. Indeed, that Statute the King hath made uſe of in print to publike view, for his ſole and onely warrant of this Commiſſion, but you ſhall ſee preſently how unſafe a refuge it is, yea how upon the firſt triall of it, it will not endure.

For in the firſt place I ſay, It is abſolutely repealed, and that by the Statute of 21. *Jacobi*, by which all former Statutes concerning the power of Arraying men are repealed, and then ſurely Statutes that concerne the execution of this power muſt needs be alſo repealed, as this of 5. *H.* 4. is, as even reaſon teacheth; for how can any Statute touching Commiſſioners Arraying, or arming men ſtand in force, when the Statute of *Winchester*, the ſole Statute concerning the power of Array is by the Law repealed; but to make it plaine to every capacity, the Law of 5. *H.* 4. is onely a Law for the indemnity of Commiſſioners, putting in execution the Statute of *Winchester*; Now if the Statute of *Winchester* be not in force, this of 5. *H.* 4. muſt likewiſe fall to the ground, becauſe it doth neceſſarily depend thereupon. Further, this Statute of 5. *H.* 4. was but temporary, and ſo expired long agoe, or no Statute at all, but a Commiſſion inrolled, or the like, never aſſented unto, in nature of an Act of Parliament, as is learnedly proved by the Remonſtrance of Parliament. Concerning the *Commiſſion of Array*, I will crave the patience to anſwer one Objection more particularly, becauſe it ſeemeth materiall;

Sol.

5 H. 4. Depends upon *Winchester*.

5. *H.* 4. Temporary no ſtatute.

Object.

Refutation of the *Commission of Array* by Parliament.

and this is made by the Penner of one of the Kings Declarations, to wit, that 21. *Jacobi* repeales indeed the Statute of *Winchester*, but not 5 *H.* 4. because *Winchester* is onely for preservation of the peace at ordinary times, as also the Assize of Armes in that Act mentioned, a petty and small proportion not suitable or agreeable to extraordinary or great occasions, as suddaine invasion, or the like; and therefore 5. *H.* 4. Authorizing a large Commission for the raising and leavying of Armes, agreeable to any occasion ordinary or extraordinary must needs be still in force, notwithstanding the repeale of *Winchester*, they are severall Statutes to severall ends and purposes; and therefore the repealing of the one repealeth not the other.

Sol. *Winchester* for defence ordinary and extraordinary.

Answer, The Statute of *Winchester* is intended by the very words and sence of the Law, for defence ordinary and extraordinary, and so is the Judgement of a Parliament, in 3. *R.* 2. that *Winchester* was made for the defence of the Kingdome, and the small proportions of Assises of Armes there mentioned, are but onely mentioned for example; *Exempla illustrant non restringunt legem*, Assises or proportions other then in that Statute limited, and above those proportions are plainely collected from the very words of this Act; as also that *Winchester* did extend to other proportions was the judgement of the Parliament, 3. *R.* 2. before specified.

Come we then to 5. *H.* 4. that recites the

Statute

Statute of *Winchester*, and confirmes it, as likewise that the Statute of *Winchester* was made for the defence of the Kingdome ordinary and extraordinary appeares by the very words of this Act for defence of the Sea-coasts, and that in that case the Statute of *Winchester* shall be observed: Are the Sea-coasts defended but for feare of forreine invasion? which likewise was the cause of making this Act; for but the yeare before the *French* attempted to invade this Kingdome: It may be said then, What needs this Act of 5. *H.* 4. if the Statute of *Winchester* provided sufficiently for defence of this Kingdome.

The very words of 5. *H.* 4. shewes that *Winchester* was for defence ordinary and extraordinary.

Object.

I answer, That this Act was made to rectifie illegall Commissions, not warranted by the Statute of *Winchester*, and this was the sole end of the making this Act. The Commissioners putting in execution the Statute of *Winchester*, the ancient and only knowne Assize, for Armes compulsary are saved harmeleisse and inpemnified by this Law, notwithstanding their former large and illegall Commissions, and that they shall execute so much of their Commissions as was warranted by this Statute of *Winchester* and no more, and for not executing the other illegall clauses in their Commissions, at the making of this Act issued forth, the Commissioners are saved harmeleisse and indemnified by this Act; so that you see 5. *H.* 4. depends upon *Winchester* notwithstanding the former objection. Eradicate a Plant you destroy the

Sol.

The true sence and effect of the statute, 5. *H.* 4.

No doubt the Military Tenure by common law was compulsary, viz. by Distreisse or the like, to services incident by law.

branch, ſo the repeale of the Statute of *Winchester* repeales 5. *H.* 4. as neceſſarily depending upon it.

(Out of their ſhires viz. unleſſe in caſe of ſuddaine invaſion.

The conclusion of all is this; The ancient Common Law formerly recited is now in force, none could be forced to finde Armes, or ſerve in perſon, but thoſe that were thereunto bound by their Tenures of Contracts, nor thoſe any further, or otherwiſe, that is to ſay, out of their Shires, or with proportions of Armes greater then they were bound unto, by their Tenures or Contracts; yea it appeares that by the Common Law Armes were proportioned, he which held by a Knights Fee was to finde a man in Armes, and ſo proportionally *De cæteris*, and therefore *Winchester* did but affirme the Common Law in this, or further enlarge it, as alſo make the proportions of Armes more penall and compulſary then before.

The ſtatute of *Winchester* ſas downe an Aſſize for land and goods, the common law extended onely to lands, and only to ſuch lands as were bound thereunto by Tenure: by this ſtatute all lands are tyed to finde Armes proportionall, but whether thoſe that were bound by Tenure were to be Aſſeſſed by the Act, and ſo charged with a double proportion of Armes. ju The ancient Aſſize in this ſtatute mentioned, was ſurely ſome law antiquated or not in force, or at leaſt not compulſary, therefore *Winchester* revives it, the common law for Tenuures is now in force onely.

Now *Winchester* being repealed, there is neither Common Law nor Statute to force any man to the finding of Armes, but onely thoſe that are bound unto it by their Tenures or Contracts; and that thus the Law is taken, upon all theſe Statures concerning finding of Annes appeares by Sir *Ed. Co'e*, in the ſecon l part of his *Inſt.*

f. 528.

f. 528. in his Expoſition of the Statutes of confirmations *Chartarum Libertatum*, for he concludes the Law to be, that no man ſhall be charged to Arme himſelfe or others, ſave ſuch as hold by ſuch ſervice of the King, or other Lords, whereby they are bound to it, unleſſe it be by conſent of Parliament; and further ſaith, that that was the Common Law which theſe Statutes did affirme.

There is one Objection more, and it is ſtrangely and much inſiſted upon by his Majeſty, in one of his Declarations for the maintenance of his *Commiſſion of Array*, and for the nullifying of all theſe poſitive Laws formerly ſpoken of, and that is upon a Statute in force, the Statute of 11. *H.* 7. *ca* 1. a late Statute and ſubſequent to all theſe, by which the ſervice of the Subject in the Kings Warres, both within the Kingdome and without, is recited, and the Subject charged therewith, according to their duty of Allegiance. Object. 11. *H.* 7. *ca.* 1.

I anſwer, this opened will likewiſe prove nothing, 'tis but the preamble of the Act, and all the doubt will reſt upon theſe words formerly mentioned. Sol.

The Subjects attendance on the King in his Warres (either within the Kingdome or without) may plainely be intended according to the poſitive Lawes formerly remembred; for ſome eſpecially by their Tenures were bound to attend in forreine ſervice, as where their Tenures were to attend in *Scotiam Pictaviam &c.* The words of the preamble.

(The

Commandment of the King what it intends.

(The Commandment of the King) here mentioned, may either be intended according to their Tenures for forreine service, or otherwise the Commandment may be taken for his legall command, not his personall, and that you have heard what it is, the command of his high Court of Parliament, and so what question of the Impressing men for forreigne service; but the Regall command according to their speciall Tenures, is that which in my judgement is full and satisfactory.

Nota.

According to the duty of their Allegiance explained.

Allegiance viz. naturall, legall, locall.

Come we then to those words (according to the duty of their Allegiance) the Subjects Allegiance is naturall, locall, and legall, but the naturall and legall Allegiance is here intended, and what is the legall Allegiance, you shall see likewise is the naturall; therefore the legall Allegiance opened ends all.

Legall Allegiance what it is, viz. the positive Militia.

The legall Allegiance is that personall service which the Subject oweth unto his Soveraigne by the municipall Lawes of this Kingdom; and that you have heard at large formerly what it is, I need not use repitition. Now the naturall Allegiance and legall differ not, but rather the legall Allegiance is explanatory of the naturall, for the Law saith, That the Subject shall serve the King in his Warres *Salvo contenemento, viz. Secundum statum & facultates*, a respect being had to every mans state, property, faculty, or ability; and to that purpose was the Common Law, and the Statute of *Winchester* limiting the Assize of Armes, viz.

Legall Allegiance and naturall agree.

Secundum

Secundum ſtatum & facultates, what ſaith the naturall Allegiance otherwiſe, but that every man ſhall attend the Kings Perſon in his Warres, according to his ſtate and abilitty, if other conſtruction ſhould be made, the Law naturall ſhould be unjuſt, and without care and preſervation of the Common Wealth, if the impoſition of this charge were not *habito reſpectu*, to every mans property, ſtate, and faculty. Thus you ſee what is meant by (the duty of their Allegiance within this Statute, peradventure it may be urged, there is another branch of the legall) Allegiance alſo, viz. when men be impreſt for the ſervice of the King by the authority of the high Court of Parliament, without any ſpeciall relation to their Tenures, or Eſtates, or to the poſitive Lawes. I grant, this is the legall Allegiance likewiſe, but this Allegiance is not intended in the Act of 11 *H.* 7. before ſpecified, for that Allegiance muſt neceſſarily be meant the Allegiance due by the poſitive Lawes, and no other, becauſe it is not the duty of the Subjects Allegiance, but what is poſitive or *in eſſe*; the other is not the duty of the Subject, neither is it any Allegiance at all until by Parliament it be ſo injoyned, but reſts in the interim *in nubibus*, or in conſideration of Law; therefore the legall poſitive Allegiance, viz. that which is due by the poſitive Lawes onely is intended by this Statute.

Legalis ligeantiæ ſpecies.

This Allegiance is likewiſe *habito reſpectu ad ſtatum*, &c. agreeing with the other legall, as alſo with the naturall, for otherwiſe Acts of Parliament ſhould be unjuſt. One branch onely of the legall Allegiance intended by 11. *H.* 7. 1. viz. the Allegiance due by the poſitive law.

Nota.

If it were taken in the other ſence in this Statute (as it is plainely otherwiſe)

yet

All statutes penned in such generall words, as this is, intend onely the legall positive Allegiance as before.

yet it would not advantage the other part, but bring them a little neater to the Parliament, and their power and authority, which they so much decline.

What shall we then say unto Armies of men thus illegally raised by the King, viz. directly against all these positive Lawes formerly remembred; Can we in Law or conscience aide or assist them? By Law we cannot as you see, then surely we cannot in conscience, the Law of this Land binding the conscience to obedience, and the observance of these humane Lawes, being so often in the holy Word of God Commanded; and for this reason as I conceive, these forces thus raised, are termed by a Declaration of Parliament, Rebells, and Traitors, because not raised by lawfull authority; and surely if Rebells and Traitors, they are to be suppressed, not assisted, and that men may be Rebells and Traitors, and decline from their duty of Allegiance, although they follow the Kings Person in the Warres, appeares by the foresaid Statute of 11. *H.* 7. *ca.* 1. the words of the Statute are for defence of the King and the Land; and therefore if against the Land, as it must be, if against the Body representative, the Parliament, it is Treason within this Law, although they attend the Kings Person in the Wars; and this is that Statute which his Majesty hath frequently made use of in divers printed Declarations of his, whereby he would seeme to exempt all those that attend his Person in the warres from

Humane lawes injoyned to be observed by Scripture,

Rebells and Traitors not raised by lawfull authority.

Traitors though attending the King's Person in the Warres by 11. *H.* 7. *ca.* 1.

from any impeachment; but surely this Statute will not aide him, for it is apparant by the Proviso of this Statute, that there is a declining from the duty of their Allegiance, although they follow the Kings Person in his warres, otherwise the Proviso were meerely idle, but to explaine it yet further, The Proviso relates to the body of the Act, the body of the Act is onely to exempt those that attend the Kings Person in the warres, and doe him true and faithfull service for the defence of his Person, and the Land. Here you see Allegiance is meant in the Proviso, viz. the service done unto the King in defence of the Realme, provided, that none shall take benefit of this Act, that shall decline from the duty of his or their Allegiance; that is to say, that shall not doe true and faithfull service unto the King, and the Land, as is mentioned in the Act; and the word (None) in the Proviso is plaine, viz None that shall attend his Person in the warres shall take benefit of this Act, if he shall decline from the duty of his Allegiance, and in this sence it must be taken and in no other; for future crimes it cannot extend unto other then mentioned in this Act, since by Law they are made uncapable of the benefit of any Law, if transgressors of the Law; *Frustra legis auxilium imploret, qui in legem committit*, and therefore this Proviso idle, if so understood; unlesse you will tax a Parliament to be misconsuant of the Lawes. Further, this Proviso (as it seemes

Proviso. Explanation of the Proviso.

Proviso relates alwales to the body of the Act in the judgement of the law.

Service done unto the King in defence of the land is the legall positive Allegiance within this Act.

(None) relates to the body of the Act. No Traitor by law can have any benefit of law.

This Proviso but explanatory.

seemes to me) is but explanatory of the Act, and was not absolutely necessary to be inserted, for certainely they had been included in the body of the Act as uncapable of benefit thereby, if no such Proviso had been at all. What need I say more, the meaning of this Law is very well delivered by the Parliament in their Declaration concerning *Hull*. Here I might touch and that not extravigantly upon the Allegiance Royall, unto what capacity of the King it is due. You see a man may decline from the duty of his Allegiance, and yet follow the Kings Person; therefore the Allegiance is not due unto the naturall Person of the King onely, but it is due unto the naturall in respect of the politique capacity, and that you see is the Judgement of this Parliament. The Subjects Allegiance may be declined, and yet the naturall Person of the King attended; and withall note, that in these times this is declaimed against as a Jesuiticall distinction, and yet the judgement of a Parliament.

This Allegiance upon this Act hath relation only to the positive law. *Vi. ante.*

The Subjects Allegiance unto the naturall capacity of the King in respect of the politick.

Object.

But it is further urged, That the penalty of this Law is remitted, and pardoned by the King.

Sol.

Statute made *pro bono publico* cannot be by any (*non obstante*) dispensed with all.

I answer, That the Kings pardon availeth not here, for the Proviso expresly excludeth all men from benefit of this Act, be it by the Kings Pardon or otherwise, if they shall decline from the duty of their Allegiance, and this being an Act for the service and defence of the Realme cannot be dispensed withall by any, *Non obstante*, in

In the Kings Pardon, as it is to those that perule the Lawes, manifeſt. I will yet crave further patience in the aforegoing particular, in the arraying and armig of men, and ſhew you how tender the Law is herein, in a Statute in 1 *Mar.* 12. (I take it) If an Aſſembly of men were made to doe any unlawfull Act, as to throw downe Enclosures or the like, and did not depart within a ſhort time after Proclamation, they were *Ipſo facto*, without any further Act done, adjudged Felons by Law, and to ſuffer death; ſo tender is the Law of *any* Aſſembly, eſpecially in any Warlike manner, to doe any unlawfull Act.

No Warlike appearance without authority of law, but punishable.

Nay further, it is a thing unlawfull for any men to Aſſemble themſelves together, or to goe or ride armed in a Warlike manner, although no evill intention appeares, unleſſe they doe it by lawfull authority or command; to goe or ride armed in Fayres or Markets is the forfeiture of their Armour, and their body impriſonable by 2. *E.* 3. *ca.* 3. and yet no evill intention appeares; and ſo are other Statutes, that no man ſhall goe or ride armed upon penalties of Fire and Impriſonment, except the Kings Miniſters in doing their Offices, and (I take it) theſe Statutes laſt mentioned, though ancient are ſtill in force. Indeed the Kings ſervants are there ſpoken of in one of theſe Statutes, and with all there are theſe words ſubſequent (in preſence of the King) ſo that the Kings ſervants in his preſence may goe or ride armed; but

No Warlike appearance without authority of law, but punishable.

2 E. 3. ca. 3.

The King's menall ſervants are here onely intended; his Miniſters of Juſtice are ſpecially here named by themſelves.

Vi. infra.

thoſe

those either for their paucity were not then, nor are now considerable, or otherwise they were inabled in those times of danger for the preservation of the Peace and the Kings Person against disturbers thereof.

By the ancient Law and Custome of the Parliament, a Proclamation ought to be made in *Westminster Hall*, That no man, upon paine to lose all that he hath, should during the Parliament in *London*, *Westminster*, or the Suburbs thereof, weare any privie Coate of Plate, or goe armed; and the reason hereof was, That the Parliament should not be disturbed, nor the Members thereof (who are to attend the arduous and urgent businesse of the Church and Common Wealth, should not be withdrawne from their service. Thus you see, how tender the Law is of any Warlike appearance. What shall we then thinke of great numbers of men in a Warlike Assembly armed, not in *London*, *Westminster*, and the Suburbs thereof, but even at the doores of the Parliament, environing the House of Commons, as it was since the Commencement of this Parliament

Object. But it is urged, That the King is compelled to raise an Army for his owne necessary defence, his Royall Person, Honour and Estate; all which are now endangered and exposed even to ruine and destruction.

Sol. Admit the truth of these aspertions unquestionable, Who shall be Judges of these dangers, and the inevitable necessity of raising

raiſing an Army? Surely no particular or private perſons, no not the Clergy themſelves, who have in theſe unhappy times (ſome few onely excepted) broken downe the wall of partition and ſeparation; I meane have intruded upon the Civill Government, and have obtruded upon the People in their Writings and Sermons; thoſe Poſitions and Maximes which admitted, would ſhake, if not ruine the very *baſis* and foundation of this famous Government. Many they are which I could here mention, but I conceive it done out of ignorance, being not willing to diſcover errours (as I hope) not wilfully committed. Nay, the King himſelfe cannot be the ſole Judge, ſo hath it been declared and adjudged in a like Caſe, the very ſame in Law and reaſon this Parliament in a full Seſſion, when the King and all the Members were then preſent in M. *Hampdens* Caſe concerning Shipmoney, where the Opinion of the Judges, together with the Judgement given in the Exchequer Chamber (That the King was ſole Judge of the danger of the Kingdom, of ſuddaine invaſion of Enemies, or the like; and might compell his ſubjects to provide ſhips for ſo long time as he ſhould thinke meet, whereby the ſubject was forced to contribute great ſummes of money) was reverſed, damned, and ſentenced as erronious and illegall, deſtructive to the liberty of the ſubject, and contrary to the Fundamentall Lawes of this Realme.

No particular perſon.

The Clergy no Judge.

The King no Judge, or at leaſt no ſole Judge.

The King no ſole Judge of the danger of the Realme.

Now if any man ſhall ſay, It is for the

Object.

defence

defence of the Kings Person, and that even the Lawes of Nature and reason warrant; and surely the Lawes of this Kingdome repugne not the Lawes of Nature and reason.

Sol. I answer, that the Lawes of this Realme provide sufficiently for the Person of the King, and for the security thereof, it being high Treason by Law to compasse or imagine, by any overt Act the destruction of the King, although not effected, not so in the Case of the subject. Further, if you consider him according to the Law of Nature, then the case is no more but as the Case of a private man or person, who may *Vim vi repellere*, even by a multitude of persons.

(King) intends the politicke capacity, not the naturall.

But our Inquisition at this time is not in this capacity, but our question is of a King constituted by Law, and the policy of man, and therein that capacity, he can doe no more then what the Law doth warrant, *Id Rex potest quod de jure potest*, and therefore you see an end of this objection. Then to revert to our Discourse; by Law (it seemes) the Parliament are the Eyes of the Body Politick, and are the onely great Counsell of the King and Kingdome, whereof the King is the head; and they are to Judge of all dangers to the King or Realme, and the King himselfe is not the Judge, and we see it is so in all other Courts of Justice; the King Judgeth not nor medleth at all either in matters concerning himselfe or any other, there being Judges by Law appointed for that

The King no Judge, or no sole Judge in Parliament by the law of inferiour Courts proved.

that purpoſe, by whoſe Wiſedom the King ſeeth, diſcerneth, diſcovereth, redreſſeth all errours, grievances or injuries, private or publike, particular or generall; how then can the King be ſole Judge in this Caſe, of the neceſſity of raiſing an Army, although it were in his owne juſt defence, without his Great and High Court of Parliament approve of the ſame? Is not this a violation of the Law and Government eſtabliſhed? Ought not they at leaſtwiſe to concurre in judgement before any ſuch Forces or Armies of men can be raiſed, and this onely by the Law of inferiour Courts? The conſideration hereof being of ſuch high concernement, that the proceedings and actions of all other matters ſeeme in compariſon hereof not at all materiall: nay, if the King might be ſole Judge in this Caſe, although the danger reall and juſt, this miſchiefe and inconvenience would follow; That the King in an Act of ſuch high conſequence for the generall good, contrary to his actions and proceedings in all other Courts, even in matters of leaſt moment, as is before mentioned, might upon ſurmiſe or ſuggeſtion of danger to his Royall Perſon, without any further conſultation with his high Court of Parliament, raiſe, and maintaine an Army of men how numerous ſoever, and juſtifie the ſame as warranted by the Lawes of this Realme, to the great impoveriſhment of the ſubject, and not without great perill (that I ſay no more) even to the very Principles of this well

Great miſchiefe and inconvenience of the King ſhould be ſole Judge, viz. of the danger of the Realme.

compacted government. Shall we imagine such a power and authority by Law vested in the King, in derogation of his high Court of Parliament, as makes the rules of Law and Justice meerely Arbitrary, as in those particulars afore specified we must needs grant, and yet in inferiour Courts, the same rules in Arbitrary Government, no where warranted or allowed; but contrary wise, their proceedings obliging both King and people to a mutuall observance, by a legall power and authority to that purpose setled in them? This were repugnant even to sence.

Now to summe up this point, if the King cannot leavie or maintaine any Forces by Sea or Land, as is formerly proved, though for defence of the Realme or his Person, upon his owne Judgement or apprehension of danger; What shall we then say to this effusion of bloud, the Authors and fomenters of this intestine Warre, shall they be protected? Surely at some mens hands this bloud will be required, and though they may here escape, yet righteous judgement must be expected hereafter.

Papists inabled, nay compelled to beare Armes contrary to the lawes, viz. 3. Jacobi 5.

Also this matter seemeth more to be aggravated, since in this late great and numerous Army of the King, those persons who are prohibited by Law to come within tenne miles of the Court, disabled by Law to beare Armes within this Kingdome, contrary to the Kings owne solemne Protestations made unto his Parliament, are enabled, nay commanded to beare Armes to the

destruction

deſtruction of the Kings ſubjects; I meane the Popiſh Party in this Kingdome, whoſe doctrine and practiſes both to King and State, in moſt execrable Treaſons, and impious Conſpiracies, hateſull both to God and man, are ſufficiently manifeſt to all the world, and need not here to be remembred.

Now there being ſuch a cloud of Witneſſes as is afore ſpecified, viz. the Common Law, the Statute Law, the Judgement of this Parliament in Maſter *Hampdens* Caſe, the very ſame in Law and reaſon convincing any capacity in the certainty of this truth, that theſe Armies now maintained by the King are not warranted by Law. What ſhall I ſay more, yea, what ſhall we thinke of this *Commiſſion of Array*, upheld by our oppoſites? What is this likewiſe but a meere uſurpation, a plaine violation of the Lawes; and what would follow if this doctrine ſhould be admitted, but a finall diſſolution of Parliaments? For what would they then ſerve for, if Armies of men may (contrary to the poſitive Lawes) be raiſed without them? They would be at the beſt but (as the tyrannicall Biſhop of *Rome* formerly boaſted) *Puteus inexhauſtus*, an ever ſpringing Fountaine, to ſatisfie the ambitious deſires of the mighty with the riches and wealth of the people; nay, peradventure Aides, Taxes, and Impoſitions would be had at pleaſure, and the people by force compelled to ſlaviſh obedience, as we have found by ſad experience,

Common Law Stat. judgement of this Parliament proving the Armies Illegall.

Commiſſion of Array deſtructive of Parliaments.

too dearely bought in a branch of these Dominions, the unfortunate Kingdome of *Ireland*, where the insolencie of the Souldiers was such, yea, even in the times of Peace, in the time of the late Earle of *Strafford*, that the Lawes were sleighted and trodden under foot, and the Paper Decrees of the Castle Chamber put in execution by these Agents in Armes, forcing the poore subject to obey whatsoever was in this wicked and illegall manner commanded; what difference now betwixt the *Turkish* Government and this new devised Monarchy, of these Dreamers, the lives and estates of all men, being subjugated to misery and inevitable destruction; but God in his good time discover these evill instruments, and bring them to Justice, who labour to involue so great a Prince into inextricable errour and calamity. I promised moderation, therefore I will say no more, but will divert my meditations to the period of this discourse, as thinking I have satisfied mine owne conscience, if not others, in so large a debate hereof.

Object. There is one great Objection made by the adverse part, which if answered, this particular is satisfied; And that is, By what authority are the forces of the Parliament raised? Seeme they not as illegall, as unwarrantable? To which I answer, That the Parliament themselves in their Declarations which I have seene, make it onely on their part defensive, there being an Army intended against them, full foure yeares

Sol.

since

ſince the Army raiſed againſt the *Scots*, and afterwards for this purpoſe implyed to awe this Parliament, and to force them to conſent unto ſuch Articles framed by evill perſons, touching the Government of this Kingdome; which appeares by the Depoſitions of divers perſons of note and quality, annexed to a Remonſtrance of Parliament, 19. *Maii* 1642. which ſure was long before an Army raiſed by the Parliament, or thought upon, the King being then preſent at Parliament; and I will not ſay it was by his privity or knowledge: Onely thus much I will ſay, That this Act was alone ſufficient to breed jealouſies and feares in the Parliament, and to provide further for their defence and ſecurity. Afterwards this was increaſed by the Kings comming to the Houſe of Commons in that unuſuall manner to demand the Members, affrighting the Aſſembly there preſent, who upon requeſt were denyed a Guard. Afterwards his Majeſty at *Yorke*, at *Nottingham*, had a conſiderable Army of men, to the number of foure or five thouſand (as I have credibly heard by thoſe that were then there preſent) and all this while no Army of the Parliament appearing, that I did heare of, only ſpeeches to that purpoſe. Now upon all theſe proceedings, the Parliament for their owne defence, the Kings Royall Perſon and Authority, the defence of the rights and liberties of the Subject, raiſed an Army, under the command of his Excellency *Rob.* Earle of *Eſſex*, which whether

or no defenſive, or juſtly done, I leave it to the world to judge upon, that which hath been formerly ſpoken. But to make a more full anſwer, and to ſquare my courſe in theſe Treaties by the poſitive Lawes, to ſtop the mouthes of clamorous people. The Parliament and either of the Houſes muſt be admitted to have ſupreme power of Judicature, without the Kings Perſonall preſence, as the Rolls and judiciall proceedings thereof ſufficiently manifeſt, as is formerly ſpoken; and if ſo, then they have power to Summon, Cenſure, and judge all Delinquents, yea, force them to ſubmit to the Juſtice of that high Court upon contempt, by enjoyning *Poſſe comnitatus*, yea *Poſſe Regni*, to execute their Commands againſt all diſobedient perſons, unto the Juſtice and Government of this Kingdome, and this meerely by the Law of inferiour Courts, as I have formerly remembred; therefore this ſhall be ſufficient.

The raiſing of Forces by the Parliament juſtified as a Court of Juſtice.

Object. *Legiſlative power juſt.*

There is one thing that ſcruples the mindes of Malignants much, and that is, That the Parliament have hitherto proceeded by a meere legiſlative power, and not by the poſitive Lawes, and that they inſtance in the Caſe of the late Earle of *Strafford*. To which I anſwer, firſt, That if they did ſo it were but juſt, according to the Supreme power of that Court, but to deſcend to our Adverſeries, and to ſearch all the Foxes Holes, that they may have no refuge. I take it cleere: that in the Caſe of the late Earle of *Strafford*, they

Sol.

did

did proceed againſt him, but according to the poſitive Lawes in reſpect of the Crime, though his triall might ſeeme ſomewhat differing, for ſurely either by the Common Law, or by the Statute of 25. *E.* 3. or by the Statute of 28. *H.* 6. as I remember, a Statute made and enacted in the Kingdome of *Ireland*, he was juſtly attainted of High Treaſon; as for the Act of Attainder, and the Proviſo thereof, that it ſhould be no preſident for the future, the meaning whereof I will open unto you hereafter; certainely it was not for want of Crime or Delinquency, as ignorant people and diſaffected falſly ſay; For a little to debate this particular in mine owne apprehenſion, and no further, becauſe I have not lately ſeene this Act. He was at firſt by Bill in the House of Commons Voted a Traitor, which Bill was tranſmitted to the Lords for their concurrence therein; but the Lords being doubtfull *De jure* not *De facto*, as they were at the firſt, in the Caſe of the late Prelate of *Canterbury*, to wit, whether he were guilty of high Treaſon by the Poſitive Lawes or no, therefore for their ſatisfaction he was tryed in Weſtminſter Hall *per pares*, by his Peeres upon their Honour, according to the courſe of the poſitive Lawes; a L. Steward being appointed, & found guilty there of high Treaſon. Upon theſe proceedings was the Act of Attainder drawne up, wherein the Clauſe afore mentioned was inſerted, viz. That this Act of Attainder ſhould be no preſident for the future,

The Common law of this Realme is in force in *Ireland*, and all ſtatutes enacted before 10. *H.* 7. in this Realme are in force in *Ireland*, vid. *Poynings Ley.*

(A&) vid. the act of Attainder of the Earle of *Strafford*

which

The Act or Judgement includes the triall or proceedings in law.

which I conceive must be intended either in respect of the Triall or Judgement it selfe; and although the clause should mention the Act, and not the proceedings thereupon, it is all one as if it had in sense of Law, for the proceedings and the triall are included and involved in the Judgement, and therefore the Act of Attainder or Judgement comprehends all depending thereupon. Reverse a Judgement at Law, you reverse all the proceedings without any mention of them, therefore they are included. Now the triall was unusuall, for in the House of Commons, he was tried in a Parliamentary way in the House of Peeres by the Common Law in Westminster Hall. Further, this Clause might have a retrospect unto the Act or Judgement, for the Judgement was unusuall, at least not necessary in this respect, he was by the positive Lawes proceeded against, Judgement might have been given against him by the Parliament; which Judgement should have been entred into the Rolls of Parliament, according to the course of other Courts of Justice, but to be attainted by Act this was more full and satisfactory, both to the offender, and to others in this respect, that all men are privie and consenting unto this Judgement either personally or representatively, and therefore all men must rest satisfied: but to returne to our former Discourse, and not to detaine you any longer with mine owne fancy, as some may say, This I will confidently averre, he was by

Vnto a Judgement by Statute all men are privie.

by the Law positive adjudged a Traitor for leavying warre in the Kingdome of *Ireland*, against the very Law it selfe; for he that goeth about to alter the Law or Governement, or to oppose it in any hostile or compulsary way, as it was proved manifestly he did, is a Traitor, within 25. *E.* 3. and leavieth warre against our Soveraigne Lord the King, as the words of that Statute are for leavying warre against the Person of the King, is included in the first branch of the Act, of compassing or imagining the Kings death, as the learned know; therefore this Clause of leavying warre against the King, if taken in the literall sence, were not so necessary, but because of some great authority in this particular which I have seene; I will conclude, that if taken in the sence against the the Person of the King, yet it is also and most principally a leavying warre against the Lawes and Government; a secret which ignorant people know not, for they thinke no Treason can be but against the Person of the King; now least any man being impeached of High Treason, should claime the benefit of this Act, which peradventure would prove inconvenient; I conceive this clause for some of these reasons added unto this Act. But some will say, That his ignorance of the offence, and his good intentions to his Majesty and the State were a sufficient Apology, the which he confirmed by his Speech unto the people at his death.

His person here subject for offending against a positive law, viz. 25. *E.* 3. as also for offending against a Statute there made, viz. 28. *H.* 6. and his possessions in both Kingdomes cleare liable by both statutes.

The Act of 25. *E.* 3. is in force in *Ireland*, either by vertue of *Poynings* law, or else by the ancient common law of *England* which is in force in *Ireland* 25 *E.* 3. is but of the ancient common law declaratory.

Com. Plees of the Crowne, Tit. Treason.

Treason against the law.

Object.

I answer, If it were so admitted, yet

Sol.

ignorantia

ignorantia juris non excusat, yea the meanest crime of the meanest person is not hereby extenuated in Law, but this was a crime of an eminent person, the highest offence in Law, and of dangerous consequence.

All Courts of Justice have their Seales, viz. *C. B. Bleroy*, this hath none but this *Ergo*.

There are some Rights of Parliament yet behind, as namely, the attendance of the great Seale necessarily upon this Court, their claime and disposition likewise of the *Militia*, the Navy, Forts, and Magazins for the defence of the Kingdom; as also of the great Offices of the Realme, all these, nor any of them being the Kings unboubted right, as he claimeth them. For to begin with the *Militia*, which (some may say, hath been formerly debated) in shewing his Majesties raising of Armies illegall and unwarrantable, and therefore here it will be but repitition.

Object.

Sol.

I answer, if it were so, yet this being a matter now controverted of so high consequence, it should not seeme ungratefull; *Que repetita placent, decies repetita placebunt.* but to dispossesse you of this fancy, you shall finde it not so, the discourse of it here you will finde in a larger notion (though very briefe) then before it was spoken of, as having in the former debate relation onely to the positive Lawes, viz, how those that were bound by Tenure or Contract to Military services could be inforced out of their Shires, which are but a paucity, in respect of those which are not impreſt by a more absolute power, being neither by Tenure nor Contract bound there-

The Commission of Array useth this power, *Vi, armis.*

thereunto, and this power hath been made uſe of both by King and Parliament, at this time moſt eſpecially; therefore here I will ſpeake of the *Militia* of the Kingdome in generall, comprifing thoſe that are bound by Tenure, as others alſo; and ſhew you in whom the diſpoſition of the other branch of the *Militia*, *viz.* that which is limited by the poſitive Lawes, is veſted and ſetled by Law, which (I take it) is not ſo plainely expreſſed before, The *Militia* therefore is apparent to be of a two-fold conſideration, extraordinary and abſolute, or more generall, ordinary and limited by the poſitive Lawes. But ſome may ſay, This will not be proper diſcourſe here, the debate of this extraordinary and abſolute Power of the *Militia*, it being out of the compaſſe of the poſitive Lawes, which I have promiſed ſhould be the onely ſquare and rule of this diſcourſe. But you will finde it here neceſſary to ſpeake ſomewhat of this, as giving great light in this other branch of the *Militia*; and withall it is a rule in Law, that the beſt way to expound the meaning of any Law, is to ſhew you what the Law was before, for by that meanes you ſhall come to underſtand the two maine parts of every Law remediall. The miſchiefe uſually mentioned in the Preamble, and the purview or enacting part ſpecified in the body of the Act.

No poſitive law veſts the *Militia* of the Kingdome in the King perſonally, *Vi. ante.*

Two branches of the Militia extraordinary, abſolute ordinary, or limited by the poſitive law.

Obj.

Sol.

Two parts of every ſtatute or law remediall.

It is conſpicuous therefore enough, that this abſolute and more generall power of the *Militia* was alwaies in the Parliament, onely

Rat. Why the absolute power of the Militia in Parliament, and not in the King, or any subordinate to him.

onely what was communicated by Parliament, be it to the King or his subordinate Ministers, was alwaies by positive Lawes or Statutes limited; yea, to what purpose had been the many positive Lawes concerning the *Militia*, *viz.* That none shall be compelled otherwise then the positive Lawes, prescribed to Military services, if this more absolute and supreme power of the *Militia* had rested still in the King; What had these Statutes enacted? Verily, even nothing at all: had they limited and restrained all persons without exception, the King as well as his Ministers, and yet had this unlimited power remained in the Regall Authority, the King should have had in one right and capacity two Estates or Powers of one and the selfe same thing, viz. of the *Militia* absolute and limited, a principle so repugnant and contradictory, that even common sence rejecteth it; it is as if one should say, A man is restrained of his full liberty, and yet may make excursions abroad whersoever he pleaseth.

Nota.

Two estates of one thing, viz. absolute and limited in law repugnant and contradictory.

Further, if this absolute power of the *Militia* of this Kingdome had been an incident unto the Royall prerogative, would his Majesty and his Royall Predecessours from time to time have divested themselves of this Royall Robe, and have yeelded to have been limited by the positive Lawes touching the *Militia*? yea, without any contradiction or reluctation, for ought that is apparent, if this absolute power of the *Militia* had been his undoubted Right and Prero-

No statute mention any thing in this nature, *viz. quæ. or debate.*

Prerogative? It is a thing ſo unqueſtionable it needs no further anſwer.

But that which muſt ſtop all contradiction, or cavillation rather in this particular is, That the King himſelfe in none of his printed Declarations claimeth that abſolute power in the *Militia*, but groundeth his Commiſſion of Array, as alſo all other his proceedings in this nature upon the poſitive Lawes, viz. upon the Statute of 5 *H.* 4 formerly at large ſpoken of; by which Statute if it were in force at this day he had no power in the *Militia*, but as the Statute of *Wincheſter* had preſcribed and limited, as formerly you have heard. Which Statute of *Wincheſter* would in no ſort warrant this illegall Commiſſion of Array, grounded upon 5 *H.* 4. as I take it cleare.

Nota.

Vide ante.

Both theſe Statutes repealed, the common law only in force.

To give you an inſtance materiall by this Commiſſion of Array, they may be forced out of their Shires, but not by *Wincheſter*, as I conceive, unleſſe in caſe of ſuddaine comming in to this Land of enemies according to the Common Law, for *Wincheſter* in this without queſtion affirmeth the Common Law, though it doth alſo inlarge the Common Law in the aſſize or proportion of Arms, making all eſtates both of lands and goods liable to the Aſſize there preſcribed. By *Wincheſter* the aſſize is certaine, no

Nota.

Commiſſions of the King grounded upon *Wincheſter* formerly, for Arraying men according to the ſtatute; no Commiſſion at this day warrantable upon this ſtatute, nor any other poſitive law. If any Kegall Commiſſion for Arraying men warrantable at this day, it muſt be only upon the ancient common law reſted in ſtat. 1 *E.* 3. *ca.* 5 relating only to Tenures. *Nota.*

latitude

latitude to Commissioners to assesse whom or how they please: But by this Commission of Array no certaine Assize of Armes, but left to the discretion of Commissioners. But to returne to our former discourse, and to adde one thing more; If this absolute power in the *Militia* had been his Majesties ancient and undoubted Right, yet it is cleare he had been debarred and forecloſed thereof by theſe poſitive Lawes, yea and conſtant uſage in all times hath manifeſted this as an undoubted truth, for Commiſſions Regall have for the moſt part iſſued forth upon theſe poſitive Lawes, and where they have been unwarrantable, they have been in all ages complained of in Parliament, and rectified. Hence I conceive it is apparent, that either a *Parte ante*, *a parte poſt*, this abſolute or generall power in the *Militia* is veſted in the Parliament, but I rather am perſwaded to conceive it was veſted in Parliament a *Parte ante*, *viz*, even before any of theſe poſitive Lawes, otherwiſe ſo great a Prerogative (if it had been juſtly pertaining to the Regall Dignity would not have been ſo easily parted withall. Then we will leave this branch of the *Militia* as pertaining to the high Court of Parliament onely, and we will come to the other branch of the *Militia*, *viz*. that which is limited by the poſitive Lawes, viz. the ancient Common Law, that being onely in force at this day. For this Branch of the *Militia* therefore, and the conſtituting of the high Sheriffe of the Country, who hath the

Generall lawes *Pro bono publico* binde the King, though not expreſly named, *Mr.* 2. 13. *E.* 1. Alſo the King by aſſenting to theſe lawes, ſeemeth implicitely to acknowledge it in Parliament.

Ratio. Why the generall or abſolute Power of the Militia in Parliament, a *Parte ante*, *viz*. before the poſitive lawes touching the Militia.

Et nota.

The poſitive or the Militia limited by the poſitive lawes. The ancient common law is the onely law poſitive now in force touching this *Militia*, for *Winchester* is repealed.

the power of this *Militia*, ſo farre as it hath relation to the poſitive Law, yea and in ſome manner participating alſo of that great and abſolute power, for he may compell any man within the County, but no further for the preſervation of the peace thereof, to attend the defence thereof, even thoſe that are neither bound by Tenure nor Contract, although the King hath uſed to conſtitute and appoint him by Patent. This is but uſage clearely for what is not warranted by 9 *E.* 2 *De vicecomitatibus* is but uſage, therefore the election of ſuch a number by the Judges in the Exchequer, the preſenting them to the King, and his election of one of them, I leave unwarranted by this Law. Indeed the Letters Patents granted by the King unto this great Officer of his Office, I take it are warranted by this Statute *Tacitè*, or by way of incidence or dependancy, for all great Offices are to be authorized under the great Seale by Law.

The poſitive *Militia* in the Sheriffe, yea and ſome ſhadow of the abſolute or generall *Militia* in him alſo.

Nota.

But peradventure it may be objected, that Sir *Edw. Coke* ſaith in his *Magna Charta*, *f.* 55. That the perſons choſen by the Judges in the Exchequer, and the Kings election of one of them, are warranted by ſome Statute in that behalfe, and not by bare uſage onely.

Object.

To which I anſwer, That it is of great weight, becauſe it was the opinion of the Judges of *England* in *H.* the 6. his time; but note that Sir *Edw. Coke* delivereth no opinion upon it himſelfe, neither is this

Sol.

Statute mentioned, either by the Judges at that time, nor by Sir *Edward* himſelfe, but onely ſo left; but certainly the Statute intended muſt be 9 *E.* 2. *De vicecomit*: And it may further be ſaid, That it is a rule of Law, that *Optimus legum interpres eſt conſuetudo*, and therefore this conſtant uſage ſince the ſaid Statute is an interpretation of it. But what if we ſhould grant this, you are ſtill never the nearer the purpoſe, for here is onely a bare nomination or election of the Sheriffe, no right of the *Militia*. Concerning therefore the election of the high Sheriffe of the County, there is no negative Law in point to take it from the Subject, and anciently I finde clearely it did belong unto the Free-holders of the County by Statute, and the Statute of 9. *E.* 2. of election of the Sheriffe in the Exchequer, as it is now uſed is but onely affirmative.

The Militia poſitive in whom by law veſted.

28 E. 1. ca. 8.

Object.

But that I may not ſubject my ſelfe unto juſt cenſure, I will anticipate and prevent what may be objected by the adverſe part. That theſe theſe two Statutes, viz. of 28. *E.* 1. commonly called by Legiſts *Articuli ſupra Chartas, ca.* 8. by which the Subjects right in the *Militia*, and the election of the Sheriffe the miniſter of the *Militia* appears, and the Statute of 9. *E.* 2. before named are the one contraty to the other in matter, and therefore within the rule of *Leges poſteriores, priores contrarias abrogant*, although they be both in the affirmative.

To which I anſwer, that they are not

contrary

contrary in matter, they differ onely in circumſtance, viz. Deſignation of the Perſons that are to elect the Sheriffe, and the rule of Law is, That the deſignation of one perſon or perſons in an Act of Parliament ſhall not exclude another perſon or perſons, which had authority to doe the ſame thing by an Act precedent, as to put you but one caſe inſtead of many, by 8. *H.* 6. *ca.* 16. The Chancellour, Treaſurer, and other Officers have power to demiſe Lands and Tenements; afterwards 32. *H.* 8. *ca.* 46. gives authority to the Maſter of the Court of Wards, with the adviſe of one of the Counſell of the ſaid Court to demiſe the ſaid Lands and Tenements mentioned in the former Statute, yet this doth not take away the Statute of 8 *H.* 6. although that this laſt Act deſigne other perſons; for if before any Leaſe made by the Maſter of the Wards, the Chancellour and Treaſurer make one according to the Statute 8 *H.* 6. then the Maſter of the Wards cannot demiſe, and ſo if the Maſter of the Wards demiſeth firſt, then the Chancellour and Treaſurer cannot demiſe by 8 *H.* 6. Many more caſes I might here inſert to cleare this particular, come we then to our two Statutes, the Statute of 28 *E.* 1. deſignes the Free-holders of the County to chuſe their Sheriffe. The Statute of 9 *E.* 2. appointeth the Judges in the Exchequer to chuſe him. Severall Acts affirmative deſigne ſeverall perſons to elect the Sheriffe, both Statutes ſhall ſtand, ſaith the Law, if the one doth

Deſignation of other perſons difference in circumſtance no contrariety in matter. *Co.* 11. *Rep.* Doct. *Foſters* Caſe. *Stamfords* prerogative. *f.* 69. *a.* Two ſtatutes affirmatively authorize ſeverall perſons; both ſtatutes effectual. *Cro.* Juriſdiction of Courts 200. *B.* ſaith, That 32 *H.* 8. taketh away, 8. *H.* 6. It may be peradventure intended with this difference. 28 *E.* 1. 9 *E.* 2. deſigne ſeverall perſons to elect the Sheriffe, both ſtatutes ſhall be in force by law.

Not materiall if 9 *E.* 2. nulliſie 28 *E.* 1. as you ſhall ſee hereafter.

In Statutes introductive the designation of the person, matter of substance not circumstance.

elect according to one Statute, the others are fore-closed, and so *è contrario*, and the rule is true. The designation of one person is the exclusion of another in Statutes, which create a new Law, but neither of these Statutes of 28 *E.* 1. or 9 *E.* 2. create any new Law concerning the *Militia*, but in the designation of the persons which are to chuse the *Militia*; this last Statute differs from the first, therefore we may safely conclude, *Ubi lex non distinguit, nec nos distinguere debemus.*

Negative words alter the law.

I have searched all the corners of my heart to avoid Hypocrisie, and of my understanding to avoid ignorance, and I cannot finde but these cases are alike in Law; therefore the 28. of *E.* is still in force and not abrogated. Further, if the words of this Law had been that they should have been chosen in the Exchequer by the Judges, and by no other persons, or, and not elsewhere, then peradventure these negative words had utterly abrogated the first Statute. Many Cases might likewise be remembred to prove this; but in our Statute there are no words but affirmative only, therefore no question upon this rule in Law, so in the end you see these two Statutes are not the one contrary to the other. Also there is another reason which makes for us, and that is that 9 *E.* 2. is onely affirmative, as you have heard, and by implication must nullifie 28 *E.* 1. and that cannot be as I conceive.

It is a high and great right of the Subjects this

this of the *Militia*, it is one of the chiefeſt flowers of the Garland of their Liberties, it cannot be diveſted out of the Kingdome but by expreſſe words; it is like unto *Jus regale*, or a Royalty of the Crowne, which cannot paſſe by implication as the Sages of the Law know, for it is the Kingdomes caſe, and no particular Subjects caſe and right, and therefore from all caſes in Law that can be oppoſed differing, 10 *R.* 2. *ca.* 5. doth not take away 13 *E.* 1. commonly called the Statute of *Donis conditionalibus* becauſe the words are generall and implicite, Statutes made by the venerable preſence of three hundred men or more, equall to the Senate of *Rome* in wiſedome ſhall not be diſannulled by ſuch ambiguous conſtructions; but I will leave this to the judgement of the learned. Further, if the diſpoſition of this branch of the *Militia* were the Kings Right by this Statute before mentioned, yet he is not the ſole proprietor thereof, but intruſted *Sub modo* to diſpoſe of it as the Law hath appointed; and you ſee in what manner the Law hath ſetled it by this former diſcourſe. The King cannot command the *Militia*, or raiſe an Army either by Sea or Land, without his high Court of Parliament approve of the ſame, they cannot be forced out of their Shires, but in caſe of ſuddaine comming into this Land of ſtrange enemies by the power of the King, or by his legall authority.

The Kingdoms right cannot paſſe by implication.

One Act repealeth not an other by words generall and implicite

If the Militia by the poſitive lawes limited were vested in the King, yet he is not the ſole proprietor, but intruſted with it *Sub modo*, as the poſitive law hath appointed.

But to lay aſide all other weapons of defence and argument, and to cloſe with the

Argument by admittance.

adverſe part upon this very Law of 9 *E.* 2. and the ſence of Law upon this Act, and admitting 9 *E.* 2. to nullifie 28. *E.* 1. which yet we doe not grant for a poſitive truth by admittance of it *Argumenti gratia*, onely we will debate this Statute of 9 *E.* 2. and open it plainely to every capacity, whereby it ſhall appeare here is no harbour for the *Militia* Royall, it will prove but *Statio malificæ carinæ*, an unſafe refuge.

The words of the Statute which they ſurmiſe veſt the *Militia* in the King are theſe, That the Sheriffes ſhall be choſen in every County by the Chancellour, Treaſurer, Barons of the Exchequer, or chiefe Baron, as another Statute hath it, or by the Juſtices by one Statute, and by another Statute by the chiefe Juſtices of one Bench, and of the other; *Parum differunt quæ re concordant*: But to our purpoſe, In whom is the *Militia* ſetled by this Statute? It is apparent not in the King, but in the Sheriffe elected by the Judges, who are ſworne as well to the Kingdome and People as to the King, as appeareth by their Oath. But yet further, In what right hath the Sheriffe the *Militia* of the County? I anſwer, Here is no right of the *Militia* veſted in any by this Statute, onely a bare nomination, then the right and power of the *Militia* reſts where it did before by Law; and that if the very letter or ſence of this Statute be urged, the right of the *Militia* is not in the King. Why then a further queſtion ariſeth upon this Act, in whom is the right of the *Militia*,

By 9 *E.* 2. a bare nomination no right of the Militia ſetled in any.

Object.

or

or in whom was it before this Statute, since this Law giveth no right to any?

Sol.

I answer, The Sheriffe had the possession of the *Militia*, the Law was *Cestuy que use*, that is to say, had the right and interest of the same; the Sheriffe had the disposition of it for the use, benefit, end behoose of the Law, for that you shall see plaine enough, for the words of the Law are to this purpose, That the Sheriffe is to dispose of the *Militia* to preserve the peace of the County, to suppresse all Riots, Insurrections in disturbance of the peace, to execute the Judgements and Injunctions of the Law in the Courts of Justice. What is the peace of the County, but the Law of the County, or rather the fruit and effect of the Law? Due observance and execution of the Law is the preservation of the Peace; whereas on the contrary, violation of the Lawes brings Warres and Division with it. Not a word here but that the Law is *Usu fructuarius* of the *Militia*, hath the right and power of it, the Sheriffe the disposition as Minister and Servant of the Law. If it be objected that the Law saith, That to preserve the Kings Peace the Sheriffe hath the disposition of the *Militia*. That is true, and yet it is nothing to prove the right of the *Militia* in the King, for the Kings Peace is meant, or the fruit and effect of the Lawes, by which Lawes the King injoyeth his Peace as well as the Subject, so that still you doe but labour in vaine. The Law still hath the right of the *Militia*, also the

The Sheriffe of the Militia possessour by 9 E. 2. the law and Courts of justice *Cestuy que use*.

The peace of the County the law of the County, or rather the fruit and effect of the law.

The Kings peace the Kings lawes, or the fruit and effect of the law.

Courts of Justice, especially the high Court of Parliament, where the law resteth as in the Center.

Vsage Regall of no force in the Militia. *Vi. infra.*

For Usage, and the Kings disposition of the *Militia De facto*, though it were since the Conquest, that is not materiall, as you shall see presently in the debate concerning the great Offices of the Kingdome, *Vbi eadem ratio idem jus.*

The Militia of the Navie.

As touching the Navy Royall, the Forts and Magazines, it is apparent, that either they are included as parcell of the *Militia* of the Kingdome, or are as appendants thereunto, and therefore as to them, *Nihil erit jam dictum, quod non dictum sit prius.* But yet to say something of them though but repitition. The Navie, that is to say, the Ships are things in their nature transitory in Law, they may have existence or not, *Diversis temporibus* as occasion requireth, and so in the eye of the Law are not things so considerable as the *Militia* of the Kingdome, which is a thing permanent and abiding, and shall have a constant existence so long as *England* shall continue a Nation of people; and therefore the Law hath not taken such speciall care for this, as for the *Militia* But to give you a full answer, and not to keepe you in suspence: What is the Navie Royall without the *Militia?* How are the Seas defended unlesse the *Militia* of the Land be designed for that purpose. Goodly materialls without any hand to move them for the publike service, fit for prospect onely, not for use; therefore you

The Militia of the Navie depends upon the Militia of the Land.

you cannot conſider them without the *Militia* of the Land to guard them, unleſſe they be furniſhed with men for publike imployment. Why then ſtill all depends upon the *Militia* of the Land, and you ſee by the former diſcourſe how that is ſerled, the King cannot diſpoſe of it, otherwiſe then the Law hath appointed it; nay it ſeemeth that the poſitive *Militia* is not in him perſonally, but ſubordinately in his Miniſters, and ſo it is ſaid in Law to be in the King. Thus you ſee an end of this particular, the King may build Ships but he cannot make them, otherwiſe then as a liveleſſe ſtructure unuſefull without the *Militia*.

The Navie without the *Militia* of the land to guard it, not conſiderable.

But to inlarge my ſelfe a little further on this particular, it appeareth that the Navie, that is to ſay, the diſpoſition of men, neceſſary for that ſervice, is not in the King but Parliament, who made a temporary Act or Statute ſince the Parliament began, enabling the Lord Admirall for the time being, to impreſt, raiſe, and leavie ſuch number of men neceſſary for the ſervice of the Navie, as ſhall be requiſite for that expedition. Hence it may plainly be collected, that ſince this Act is expired the *Militia* for the Navie muſt of neceſſity reſt in the power of Parliament, ſince the King by implicite conſent in enacting this Law ſo conceived, for otherwiſe he would not ſure have aſſented unto ſuch an Act, ſo derogatory to his Regality, if the Law had not been ſo at that time, but he would have

Since this Act ſome Ordinances for the Navie no Act or ſtatute.

Ratio, why the Militia of the Navie muſt reſt in the power of Parliament.

Et nota.

have authorized the Lord Admirall by Commiſſion under the great Seale, and ſo no Act of Parliament had been neceſſary.

Object. Further, if any man ſhall object and ſay, That the power of the *Militia* for the Navie was in the King before this Act, and that was the cauſe of making this ſtatute but temporary, which alſo being expired, the *Militia* of the Navie is reveſted in the King againe.

Sol. The anſwer of this will be but *Actum peragere*, the *Militia* of the Navie depending upon the *Militia* of the Land before this Act, and therefore the *Militia* of the Land debated as formerly you have heard at large, both that generall and abſolute of the *Militia*, as alſo that which is limited by the poſitive lawes, there needs no further anſwer.

The Militia of the Navie in law the land militia.

Further, it is evident to me upon this very Act without any retroſpect, to what hath been formerly ſpoken, that the *Militia* of the Land, the great matter now controverted, muſt of neceſſity reſt in Parliament, for it is parcell of the *Militia* of the Kingdome, the *Militia* of the Sea is alſo the *Militia* of the Kingdome, yea of the Land it ſelfe, for the Sea and Land are incorporated by Law in point of Dominion, and made one body ſubject to one head. The *Militia* therefore of the Kingdome, and the *Militia* of the Land are all one in Law, and in the *Militia* of the Kingdome you muſt include the *Militia* of the Navie, ſince the kingdom in judgement of law includeth

Sea and land incorporated in point of dominion, if the militia of the ſea pertaine to the Parliament, ſo muſt alſo the militia of the land, unleſſe you divide the power of the militia.

deth both Sea and Land; Or otherwiſe, if we ſhall abandon all reaſon in the Expoſition of this Statute it muſt at leaſt be granted, that the *Militia* of the Navie is in the power of the Parliament, even by the implicite judgement of the King and his great Counſell, and admit a fraction or diviſion of this great power ſo dangerous to Government, and tending much to the weakening and enervating the great ſtrength of this Kingdom, I mean the *Militia* thereof, and be occaſion of perpetuall inteſtine wars in this Nation; a poſition ſo inconſiſtent with Government, and diſhonourable to the Wiſedome of this State, that I thinke there needs no further confutation of it.

Nota. Diviſion of the power of the militia dangerous to government.

The Forts and Magazines ſurely are as attendants and adjuncts unto the *Militia*, and that common reaſon teacheth the one to ſecure the Ammunition pertaining to the *Militia*, and as a receptacle for the ſame, commonly called the Store-houſes for Armes, the other to imploy the *Militia* in for the defence of the Land againſt the enemy, for ſurely the Forts and Caſtles defenſible belong not unto the King in right for one ſpeciall reaſon, becauſe if they ſhould belong unto the King, then you muſt grant him a power and right in the *Militia*, to be imployed in the ſervice of theſe Forts and Caſtles, for to what purpoſe hath the King theſe if he cannot command the *Militia* of the Kingdome to defend them; they are then in judgement of Law and reaſon houſes or Princely Pallaces onely,

The militia of the Forts and Caſtles.

Ratio, why the Forts and Caſtles defenſible pertaine not to the King.

onely, nor Forts or Castles, so that you see in conclusion by Law and Reason we are come to this. The right and power of the *Militia* of the Kingdome rules all Forts, Ships, Navie, Magazines, Castles, all depend upon this; therefore I hope I have spoken of these particulars sufficiently.

Object.

It may be objected, that Sir *Edw. Coke* saith in his Institutes upon *Littleton*, That no man can build a Castle defensible or of Military strength without leave of the King; hence it may be inferred, the King may build, and consequently hold such a Castle or place of strength; but what of this, he hath nothing to doe with the *Militia*, this notwithstanding. And if it should be granted otherwise, yet he cannot defend it with any other *Militia* then of those persons that are hereunto especially bound by Tenure or Contract, neither can any be forced out of their Shires contrary to the Law, to defend this place of strength, or Castle; also that the King may build and hold a Castle defencible, may thus be intended.

Sol. The ancient Common Law for the land *Militia* rules the *Militia* for the Forts and Castles

The Sheriffe hath his authority from the King, viz. by Statute, 9 *E.* 2. unto which the King hath assented, to defend any Castle defencible with the *Militia* of the County, therefore if the Sheriffe, or any such like subordinate authority from the King hold a Castle defenceable, it is in judgement and speech of Law the Kings possession of the same, but of this sufficient.

The Sheriffes possession the Kings possession of any Castle or Fort.

For

For the great Offices of the Kingdome, the diſpoſition of them did anciently belong unto the Parliament as their rights, and that Maſter *Lambard* a learned Lawyer in his *Archeion of the Courts of Juſtice* teſtifieth, whoſe words are theſe; That the Keeper of the great Seale was wont to be elected by Authority of Parliament; and he ſaith further, That he had read, that *Ralph Nevill* Biſhop of *Chicheſter*, being Chancellour to King *H.* 3. being Commanded, refuſed to yeeld up his Seale unto the King when he required it, affirming that as he had received it by the Counſell of the Realme, ſo he would not without like warrant reſigne it againe. And in the daies of the ſame King, it was told him by all his Lords ſpirituall and temporall, That of ancient time the creation and diſpoſition of the chiefe Juſtice, the Chancellour and Treaſurer belonged to the Parliament. Thus farre Mr. *Lambard*, Dr. *Cowell* alſo in his Booke, called *The Interpreter*, whom I nominate at this time as a Royaliſt in this, yet he citeth a Preſident in the time of King *H.* the 6. who directing his privie Seale to *Richard* Earle of *Warwick*, thereby to diſcharge him of the Captaine-ſhip of *Calis*, the Earle refuſed to obey, and continued forth the ſaid Office, becauſe he received it by Parliament; and the inference of *Cowell* hereupon is falſe, that either the King muſt be above his poſitive Lawes, or elſe he is no abſolute King; for he is an abſolute King, though not above the Lawes, for his

The great Offices.

The great Offices anciently pertaining to the Parliament.

Vid. Devant. f. 16. 6.

his Government were then meere Tyranny; also the Kings of this Nation are not in that sence absolute Monarchies, for this is a mixt Government, partly Politicall, partly Monarchicall, as that worthy Knight Sir *Thomas Smith*, in his *Common Wealth of England* affirmeth, and this I have remembred before. Further, Sir *Edward Coke* in his *Magna Charta*, *f.* 558, 559. saith, That anciently Offices either for the preservation of the Peace, or execution of Justice, because they concerned all the Subjects of the County were not disposed of by the King, but by the Free-holders of the County, chosen in every severall Shire by the Kings Writ; now if it were so for the publke Offices of the County, the same Law and reason telleth you, that it must be so for the publike Offices of the Kingdome, either it must rest in the people, or their representative Body.

Object.

But it may be objected, That Sir *Edw. Coke* saith in the sam · place, that the Statute before named of the 28 *E.* 1. is altered by 9 *E.* 2. and so this Office of the Sheriffe being a publikr Office for the preservation of the Peace: and execution of Justice also is not in the Subject, or their representative Body.

Sol. (Altered) not abrogated or nullified.

To which I answer shortly, because it hath been formerly debated. That Sir *Ed. Coke* is thus to be intended, that it is altered partly as to the election of the Sheriffe in the Exchequer, if the Judges pursue the same Statute, and the Free holders of the

County

County doe not elect before them, and ſo that authority is good Law. We muſt make ſuch interpretation that every learned mans judgement may be honourably eſteemed and be effectuall. It likewiſe appeareth by the ſame Author, that anciently the Conſervators of the Peace, or Juſtices of the Peace were choſen by the People, and ſo are many Offices at this day, the election of the Officers is by the Free-holders or people, the Kings Writ iſſuing forth firſt for that purpoſe. Now what Law hath taken away thoſe from the people, or their repreſentative Body? Verily none that I know, nd act Judiciall, or Record, whereby the right of the Kingdome is expreſly given away, or if this did appeare, or if it ſhould be granted that uſage recorded in the Kings Caſe were ſufficient, yet in theſe particulars it will not give a right unto the King; and if he hath time out of minde diſpoſed of them, yet this will not availe, if by any matter of Record, the right of the ſubject appeare, as it doth by Statute Law before remembred, and by legall authority, then uſage is invalid as the learned in the Lawes know. The Act of 28 E. 1. ſettles the *Militia* in the ſubject, as you have heard formerly; here the right of the ſubject appeares, the Forts, Navie, Caſtles, and Magazines depend all upon the *Militia*, either the abſolute or generall power of the *Militia*, or the *Militia* poſitive, or regulated by the poſitive Lawes; both which are by Law veſted in the People, or the repreſentative

Uſage of no force againſt a ſtatute or judiciall record.

No ſtatute gives away the Subjects right expreſly in the diſpoſition of great Offices, or of the militia.

Nota.

tative Body the Parliament, as you have heard formerly. The great Offices of the Kingdome appeare by learned and legall authority, afore mentioned in the Subject, and their representative Body, both in right and in disposition. What shall I say more, if this be not sufficient to make the Subjects right cleare in this particular. Then although the King hath by usage almost gained a perpetuity in them, yet this will not serve, no prescription or use will be of force against a Statute, or judiciall Record, for that is proofe to the contrary, as the Law saith. And the Kings Case is all one with the Subjects in this; Regall use is of no force against a Statute or judiciall Record, for as the rule of Law is true, *Nullum tempus occurrit Regi*, prescription is not good against the King in many Cases, so it is as true, *Nullum tempus occurrit legi*, no usage or prescription is of any effect either in the Kings Case, or Subject against the Law, appearing by Statute or judiciall Record; and I hope no man will say, but that the Rolls of Parliament are judiciall Records, besides our legall Annals or Bookes. Further, if usage should be admitted, yet here have been divers clamours and interruptions of Parliament, yea, dispositions by them of those great Offices, and those other particulars, and then necessarily usage is not of force, as the Law saith, for the Parliament claimes unto the great Offices of the Kingdome, yea their disposition of them from time to time I have spoken

Prescription of no force against a Statute.

Usage of no force against claimes and interruptions.

ſpoken of before, as alſo of the Subjects diſpoſition of the *Militia*, or their repreſentative Body, for it cannot appeare that the King hath by diſpoſition of them time out of minde gained any inheritance in them, in the right (as we ſay) but that there have been Claimes and diſturbances by the Subject, or their repreſentative Body, and then uſage neceſſarily is of no force. Before I conclude this particular, I will anſwer one Objection that happily may be made touching the *Militia*, and that is this; that Sir *Edw. Coke* ſaith, That no man can leavie Warre within the Realme without authority from the King, for to him it onely belongeth.

Vſage gaines no inheritance or right of claime or interruption.

Object.

Pleas of the Crowne, *f.* 9.

I anſwer, becauſe the authority is great, that his legall or politick capacity may be very well here intended, and not his perſonall, and ſo the authority of every Court of Juſtice is the Kings authority, the words (*De mandato noſtro*) in the Writ of *Melius inquirendum*, upon a former Office defective, are intended not the Kings Perſonall Command, but his Command by Writ, iſſuing out of a Court of Juſtice; ſo the authority of the King is in this place meant his legall authority, not his Perſonall, which every Court of Juſtice ſpecially upon Record is inveſted withall. Alſo the ſubordinate authority of the Sheriffe, as alſo of every Court of Juſtice is the Kings authority even in the literall ſence, for the Sheriffe and Judges of the Court of Juſtice are authorized by the Kings Letters Patents.

Sol.

Authority from the King intends his legall or politick capacity, not his perſonall or naturall.

In a literall ſence the Sheriffes authority is the Kings authority.

No man &c. purport thus much, no man of his own private authority. Legall authority the Kings authority.

Nota.

A'lso they that have their Authority by Acts of Parliament, as the Sheriffe hath, have their authority from the King, for are not all Acts perfected and confirmed with the Royall assent? So that these words before specified, viz. no man, &c. purport plainly thus much; No man of his owne private authority without legall authority which is the Kings imediate authority, can leavie War within this Realme.

If you should make other construction, you nullifie the positive Lawes, and even the legal course of Justice and Government. So that we may safely conclude (I hope) upon the premisses, that the Subjects right, and consequently of their representative Body to dispose of the *Militia*, and of the great Offices of the Kingdome remaineth yet undoubted even at this day. These things have been judiciously debated, and at large by a learned gentleman very well knowne, therefore of this sufficient. You that are now learned and wise, be not seduced with errour, pause a while and consider with moderation what is become of the Regall power, viz. the Kings personall

Note that all the statutes touching this high point of the Militia are warily and cautiously penned, not one law that has expresse words

or by any sound Collection, or inferences settles it in the King personally, those statutes that the King make use of, and which mention the military service due unto the Regall Dignity, are in generall termes, and may very well be with relation to the positive lawes precedent, as 11 *H.* 7. *ca.* 1. 5. *H.* 4. 1 *E.* 3. *R.* 5. None of them can be intended of the generall or absolute power of the militia, but of that part of the Militia that is by the positive lawes limited; for if otherwise, you must by such construction nullifie all the positive lawes proceeding. Nota *Vid. ante.*

power,

power, such as you would have it in the *Militia* of this Kingdome? That which the King will not part withall, no not for any time, be it to his Wife or Children, so neare and deare it is unto him, and of so high consequence as he professeth. There are but two branches of the *Militia*, the one generall and more absolute, the other speciall, and limited by the positive Lawes as you have heard. For the generall and more absolute power over the *Militia*, it is apparent to be inherent of ancient right in the high Court of Parliament onely; I thinke the premisses duly considered, no rationall man will deny it; for the other part of the *Militia* limited by the positive Lawes, you have heard it is vested in the Kings Ministers, the Judges and great Officers of Justice by the positive Lawes not in the King personally considered. What is then become of the great Commission of Array, which clearely claimeth and useth both these powers of the *Militia*? What are Armies of men raised by these illegall meanes? You have heard formerly in this discourse what they are, I should be sorry to repeat it.

The supreme Moderator of all things will one day Judge these exorbitancies, I will say no more; There is one yet great Objection of those that are curious and hard to be satisfied, it is somewhat darke and Enigmaticall to the ignorant, and that is, That Armes are taken up against the King by the Parliament, they leavie War Object.

against his Person, an Act in it selfe impious, and by the Divine or Humane Law in no wise warranted. To which I answer, That this Allegation is false and untrue, there is no force or violence offered, or intended to be offered against the person of the King; we conceive his person onely free from the Sword; but if you take his person for his power raised by him coagmentative, there we differ from you, for by the Law Divine, whether his person and power raised by him illegally be together confounded and not distinguished, or whether Tyranny or abused Authority shall be said to be the Ordinance of God, and so not to be disobeyed; I will not meddle in the decision thereof, though I take it cleare they shall not; for, goe to the very Etymology of the word (Ordinance) mentioned frequently in the Scriptures of God, and so much insisted upon by the other part, that it ought not to be resisted; it is plaine, it is derived (*Ab ordine*) from order, wisedome, and judgement, the shadowes of the Divine essence which is an eternall Law, of admirable wisedome even to it selfe, and is the *Primum mobile*, and originall of all Order and Law to the Creature. Now in Tyranny and abused Authority there is nothing but folly and madnesse, as I may so say, the authours of disorder and confusion; and surely if the Lawes of man be called Ordinances for this reason before mentioned, What shall we thinke of the Law of God? Whatsoever is by this Law appointed

Sol.

By the Divine law the regall person differenced from the regall power.

pointed is wiſedome and judgement in the abſtract. That place of Scripture which you wreſt by miſ-interpretation for the purpoſes warrants no ſuch matter. This ſhall be the manner of the Kings, ſaith *Samuel* to the people, *They ſhall take your Sonnes and your Daughters, they ſhall take your Fields, your Vineyards, and give them to their ſervants, &c.* From this place of Scripture make you Tyranny the right of King, (for ſo ſome of you render the words) and ſo *Ex conſequenti* the Ordinance of God is, *Mos Regis, jus Regis*; Is it the right of Kings becauſe the Act of Kings? then Murther, Adultery, &c. are the right of Kings, and the Ordinance of God; ſo God himſelfe is made the Author of all wickednesſe, a moſt impious and deteſtable opinion. Yea, doth not the practice of the Kings of Iſraell manifeſt the ſame? Did *Ahab* take away *Nabothe* Vineyard as his right without any further proceedings? Did he not by pretence and colour of Law take away his life and Vineyard? Did he not ſuborne Witneſſes againſt him? This man blaſphemeth God, and the King was he not much perplexed & troubled in minde at *Naboths* deniall? All theſe things ſurely had not been if it had been lawfull for *Ahab* to have taken his Vineyard from him; yea, what ſaith God unto him for this? Haſt thou killed, and alſo taken poſſeſſion? Is this Divine approbation? Are either of theſe Acts allowed, or not plainly reproved? haſt thou taken poſſeſſion implyeth clearely, that *Ahab* taking *Naboths* Vineyard was not

1 Sam ca. 8.

(Render the words) viz. this ſhall be the right of the Kings.

Gods Ordinance or Law, but the wicked abuse of Divine authority. Further, I conceive upon the Acts of *David* and *Elisha*, mentioned in the Scriptures, it is lawfull to resist Tiranny and abused authority; yea, that it is lawfull to oppose the Regall power, though not the Regall Person; but to leave these things to those that are learned in Theology, we will search a little the Lawes of the Kingdom: Doe not our Lawes make the same distinction, betweene any power illegally raised by the King, and his Person? May not the one be lawfully resisted, not the other? Hath not the Law appointed the *Militia* of the Kingdome to suppresse any Ryots, illegall Assemblies, yea, though commanded by the King? I suppose that may be made aparent enough, for put the case that numbers of people, being *Insidiatores viarum & agrorum depopulatores*; gaine the Person of the King, yea his protection under the great Seale: shall not the Magistrates and Ministers of the Law execute the Law against these persons, notwithstanding the King be present with them? Sure they may and ought. But peradventure you will say, This case is nothing to our purpose, they that have now adhearad to the King are good Subjects, no Delinquents, as your instance formerly imports. I answer, the reason of the Law is the same in both Cases, yea, they are delinquents in both Cases that take up Armes without lawfull authority; and further, they are Traitors also, though they aide and assist the Kings person, as you may perceive by

Distinction of the regall person and the regall power by the law of this Realme.

Object.

Sol.

by the former discourse, but I will explain the Law a little further in this particular. There are two or three severall Statutes in the Raigne of *E.* 3. and of other Kings of *England* containing these words, or to this effect; That the Judges, or the Kings Justices shall not delay to doe justice and right, yea, they are commanded so to doe even in the Kings Case, notwithstanding the King by his great Seale or Privie Seale command the contrary. But we then the case, that the great Seale is sent to stay the course of Justice, and the Messengers thereof be numbers of armed men, shall not the Justices oppose this illegall power? Shall they not apprehend these persons as Rebels unto the State and Government, if they shall attempt the execution of this illegall command by force or violence? nay, I conceive they are subject unto great and severe censure (if not Capitall) for appearing in Armes in disturbance of justice, although they offer no force or violence at all, but deliver their Message to the Court. And is it not apparent that these persons shall be impeached as offenders, *Contra coronam & dignitatem Regis*, notwithstanding the Kings Seale? yea, if the King shall be present with them, this will not alter the Case, the Judges are to execute the Law in the Kings name against them, and further, to pronounce them Traitors if in forceable or hostile manner they shall endeavour to interrupt or hinder the power and authority of the Law; here you see the distinction which the Law makes betwixt the Regall

2 *E.* 3. *c.* 14. *E.* 3 *ca.* 14.

The King by divers statutes disabled to raise any Armies of men, or to come in any hostile manner to disturbe justice.

These men Traitors by law, though the King present with them, if any hostile way they execute his illegal command, or indeavour the same.

Nota.

The Kings person not crimi nous by law, and the reason.

person and the regall power. The Kings person is subiect to no debility or imperfection in judgement of Law, and therefore no crime or offence can be incident to his person, witnesse the Attainder of King *H.*7. before he was King resolved by all the Judges, that *Ipso facto* by attaining the regall dignity, all attainders of Treason, or any other offence were purged, and that there needed not any reversall of them in Law; and this appeareth in the legall Annals of the said King, you may plainly perceive the Kings person uncapable of crime by the Law of this Land, his person is sacred and not to be touched with violence; yea, the Law medleth not at all with his person, as being innocent of all crime, as to any legall imputation; but the power of the King, in what condition it stands you may easily see. Which *Henry* the 7. wisely fore-seeing procured that Act, 11 *H.* 7. *ca.* 1. before mentioned, to exempt the attendants of his person, as also of his successors from impeachment, knowing that by Law they might become offenders, although they followed his person in the Warres, and did him true and faithfull service for the defence of the King and the Land, because his Title unto the Crowne, as the times then were, might not prove firme; for if his Title by Marriage should have failed, as even the state of Princes is subject unto humane casualty, then his attendants in the Warres upon his Person should be in danger of judgement, as being raised without

(Regall imputation

Nota.

The true reason why this act of 11 *H.* 7. *ca.* 1. was made.

Nota.

without lawfull authority, ſo as by this Act if a *Perkin Warbecke* ſhould attaine the regall dignity lawfully; his Attendants in the Warres were by this Act free from impeachment, if they declined not from their duty of Allegiance in this Statute mentioned, which by Law had not been ſo if this Act had not made this ſpeciall proviſion. Now you may view plainly the Kings Perſon and his Power diſtinguiſhed, alſo you may ſee in the expoſition of this Statute formerly mentioned the ſame difference. They may attend the Kings perſon in the Warres and yet Traitors by Law, his Perſon ſecured, his power not ſo. And although the King pardoneth this Offence upon this Statute, as it appeareth formerly he hath done, yet ſurely this is not effectuall, for he is diſabled by Act of Parliament to take benefit of this act, and therefore the King cannot inable him, as upon 31. *Eliz.* in caſe of ſimony, if the King preſent the ſame perſon ſimonically to the ſame Benefice, and withal in his preſervation, there is a ſpeciall *Non obſtante*, yet this will not availe. Alſo I conceive, if he be Impeached in the high Court of Parliament upon this Act, as he may be, and not by Indictment at Common Law, then ſurely the Kings Pardon will not aide him. I have been ſomewhat more prolixe upon this Statute of 11 *H.* 7. *ca.* 1. becauſe it is much inſiſted upon by the adverſe part. Give me leave to impart unto you ſome ſpeciall obſervations upon theſe Statutes of *E.* 3. before mentioned,

(Lawfull) viz. by conſent of the Realme, by authority of Parliament.

(His power not ſo) viz. his illegall power.

Vi. ante, f.

Impeachment in the high Court of Parliament diſables the Kings pardon. Nota.

ned, viz. That Justice shall not be delayed for the great or little Seale of the King. Three particulars worthy the consideration branch themselves out of these Lawes naturally; First, That the King may erre in his judgement, his Commands may be illegall and contrary to Law. Secondly, That Armies of men, or men in Armes may be raised by the King without authority of Law. Thirdly, That these forces thus raised by the King are to be suppressed and punished as Delinquents to the Lawes and Government, notwithstanding the Kings Command; where you may likewise evidently perceive a difference in Law betwixt the Kings Person and his Power. I will debate these three particulars briefly. The King may erre in his judgement, he may Command contrary to Law; yea, that his verball protestations may be otherwise in private to the Judge, in publike to the world; the Judge is not bound to beleeve his verball protestations, though under Seale, he is to execute the Law, and not to delay right and justice. Note here the command of the Law, the command of the King; the command of the Law to be obeyed, not the King: note also here the supreme power of the Law before spoken of.

Note the contrary held in *Cambridge*, in the Case between the Archebishop of *Canterbury* & Chancellor, viz. That the King sitting in *Cathedra personally*, though he might erre in circumstance or the like, yet in point of judgement he could not erre, 11 *Car. ant eo circiter.* The King may errein judgement proved by the law positive.

Nota.

Object.

Our Malignants cry out and say, Is not the King to be beleeved? He hath protested upon the holy Sacrament to the world, that he will preserve our Religion, Lawes and Liberties, yea that he will not violate the Lawes; we are Rebells and not Subjects,

Subjects, if we should discredit the protestations, yea, the Oathes of our Prince.

Sol.

I answer, The Judgement of a Parliament is otherwise, he may erre, his Commands may be illegall, and the Judge is not to regard any protestations that are otherwise, but to execute the Law.

The King may raise Armies of men contrary to law.

We are good subjects notwithstanding this false aspersion; for the second particular, he may raise Armies of men against Law, that you see plainly, for if he send this Message to obstruct the course of Justice by numbers of Armed men, are not these men illegally armed? For it appeares they come to oppose the Law, a great offence, by these Lawes evident enough. Here likewise appeares the truth of that Statute of 11 *H.* 7 afore named, so much mis-interpreted by evill Counsell about his Majesty; (such Counsell by which his Majesty is seduced in his heart, and misled, of which Counsell the Law taketh no notice at all, whilst the wisedome of the great Counsell of the King and Kingdome, so by Law deemed and determined, even in the interpretation of this Law and many others, is neglected and not regarded;) for these numbers of armed men comming with the Kings Seale to stay Justice, yea, though the King be attended by them in Armes, are capitall Offenders and Traitors, and so to be certainly pronounced, if they shall forceably attempt to execute this Regall Command, though the Kings person be attended by them. What speakes then the Act of 11 *H.* 7. but what

Of what Counsell the law taketh notice of.

former

former Statutes have said. The Allegiance of the Subject may be declined, and yet the Kings person followed in the Warres; for the Regall Warres may be unjust upon all these Statutes, and so it is cleare to any rationall man. I am sorry to unfold these hidden and secret Mysteries of the Law thus farre; for I doe unfainedly honour the King; but, *Amicus Socrates & amicus Plato sed magis amica veritas.*

Regall forces not warranted by Law, are clearely to be suppresst by these lawes.

For the third particular, that the Judges are to suppresse this illegall power, I need not much trouble you withall, for otherwise the words of these Statutes were idle and illusory; how could the Judge proceed to Judgement, if these men that come to stay the course of Justice were not hindered in the execution of this illegall Command. The sence of the Law to be thus upon these Statutes, he that runneth may read. I intended no more but by way of supposition, but in respect that application is necessary in these distracted times, and usefull in all Discourse, in regard that our opposites will say, and clamour too, That none of these Lawes are in question, there is no violation of them, therefore you shall see that in our unhappy times all these afore recited particulars are verified.

Application, & Nota.

The King doth erre in his Judgement, his Commands are contrary to Law; witnesse the Kings Command to apprehend the Members of the House of Commons, contrary to their Lawes and Priviledges, and to try them upon supposed Crimes elsewhere;

where; yea his Majesty himselfe came in Person into the House of Commons, and Demanded, or Commanded delivery of them. The illegall Commission of Array so often issuing forth, a great oppression to the people, whereby he armeth thousands of men, at this day, contrary to Law and Justice, the King claiming no other power to Array his people, or Arme them by his owne Declarations in print, but which depends upon the Statute of 5 *H.* 4. before remembred, and that Statute is not in force, as you may perceive in this Treatise formerly. What need I say more, Commissions have been sent under the great Seale to Array the City of *London*, and other places of this Kingdome, to take up Armes against the Judges of that high Court of Parliament, to hinder Justice and Judgement, as these Statutes afore mention; Shall not these Judges proceed to doe right and justice, these illegall Commands notwithstanding? Doth not the King arme the Papists contrary expresly to Law, yea, by Commissions under seale to fight against his People, against his Parliament, when as by 3 *Jacobi, ca.* 5. they are to be disarmed, and to beare no Armes within this Kingdome; and although the King License them, nay, Command them to take up Armes as the case now is, that will not aide them, since the Statute is for security of our Religion, and our Lawes against the enemies thereof, the King cannot dispence with it. For the other particular, That the King hath

Nota.

3 Jac. ca. 5. not to be dispenced withall.

hath raised Armies of men to execute these illegall commands, and that the Judges of the Law, and of the high Court of Parliament have according to their duties upon these Statutes endeavoured these illegall forces, it is plaine enough.

Now what say you unto these things, yee that believe in errour and falshood? Are we still rebels and traitors in your judicious opinions? Fight we for the Lawes, and for the maintenance of them, and are not one of the actions amongst many, which might here be remembred justifiable, and yet are you the good Subjects, and we the desperate Rebells? What if you shall say, We are no men that are compelled to take up Armes, we serve the King voluntarily, we are none of the illegall Commission of Array. I answer, *Incidit in Scyllam qui vult vitare Charibdem*, you fly from one extreame to another, from one defence illegall to another; are you not punishable to goe or ride armed by Statutes formerly mentioned, without any evill intentions appearing? how much more then when you goe about to violate and transgresse the Lawes. Your voluntary act here makes the offence the greater, as for the exception of the King and his Servants in his presence, mentioned in these Lawes, that is nothing, it will not helpe you at all, for these Lawes, as I have formerly spoken, intend only his servants meniall, and for preservation of the Peace likewise; what is this paucity of men to Armies numerous? Here is no refuge for you in

Traitors within 11. *H.* 7. *ca.* 1. though attending the Kings person in the Warres voluntarily, if you decline from the duty of Allegiance, as it is plaine you doe.

In theſe Statutes, we are come to *Hercules* Pillars, to a *Ne plus ultra* with our oppoſites, we are come to ſo ſtraight a paſſage that there is no declining either to the right hand or to the left, for I thinke we have ſearched all the corners of errour; I will purſue you no further, I wiſh you may at length turne it to the wayes of truth, leaſt that God open the mouth of the dumbe Creature to reprove the folly and madneſſe, ſince the voice of the Law moveth you not at all. Hence it is apparent, that the Law as ſupreme hath inveſted both King and people, with that power which they have by Nationall pact and agreement, and therefore if tranſgreiſed they are liable unto judgement, as you ſee it cleare in matters touching the Kings poſſeſſions, though not his perſon; and if the Law come ſo neare the perſon of the King in point of coertion, as his Lands and Eſtate, making them Subject to the Decrees and Edicts of the Law, pronounced in the Courts of Juſtice; then common reaſon teacheth you, that the Law hath a compulſary power over all illegall forces raiſed by the King; for the Revenues and Lands of the Crown are more neceſſary and incident unto the regall Dignity, and are nearer conjoyned unto it in point of defence, maintenance and ſecurity, then any power not warranted by Law. Witneſſe this Caſe, that the Lands and Revenues of the Crowne, come they by diſcent or purchaſe, goe to the next ſucceſſour to the Crowne, contrary to the rules of Law in the Subjects Caſe,

The Law uſeth a power coertive as to the Kings poſſeſſions, yea as to any power illegall raiſed by him.

Case, an instance of this the discent of the Crown from *Ed.* the 6. to Queen *Mary*, resolved by all the Judges, that the Lands of the Crowne descended to the said Queene, though but of the halfe bloud to King *Edward*; yea that the Jewels of the Crowne, and personall Estate vested in the said Queene, and the reason of the Law is the same before mentioned for defence, maintenance and security of the Regall Dignity or Person; but any illegall power raised by the King dyeth with his Person, it can neither discend, neither can it be disposed of by the King, it hath no affinity (as I may so say) nor any relation to his Person; yea, the Law taketh no notice of it at all but with an eye of Justice; so that it is manifest the Law useth a coercive power, as to the Kings possessions, yea, as to any Armies of men, or forces raised by the King without legall authority.

(Halfe bloud) hinder not discent of the Crowne.

Come we then to his Person, see the wisdome of the Law there also, it useth no coersive power, because his Person by the Divine Law is Sacred; as also it is needlesse for the Law to use a compulsary power over the Kings Person, seeing that his Lands and Possessions, yea, any illegall power raised by him are subject to the Censure of the Law: What formidable thing is his Person if you take away any power from him but what is warranted by Law? What need of coertion over his Person? I speake not this to diminish the just and due rights, and greatnesse of the King, for the Majesty and greatnesse

No need of coertion as to the Regall Person. Nota.

greatneſſe, with which the Law hath incompaſſed him is in truth, Majeſty, *Et regia celſitudo*, illegall Magnificence makes him but a poore and weake Prince, deſpicable even in the eyes of his People, *Ejus poteſtas* as *Bracton* ſaith, *eſt juris & non injuriæ*. But to draw to a concluſion, inferiour Courts of Juſtice have their authority to ſuppreſſe any force raiſed by the King, if not allowed by Law, as it appeareth in this Treatiſe, that theſe Armies of men by the King Commanded are in no wiſe legall. What ſhall we then ſay? Shall not the high Court of Parliament have the ſame authority which inferiour Courts, Hand-maids unto it, even in time of Peace have uſed and exerciſed? I am aſhamed of this groſſe Ignorance. Now you that have many tergiverſations and ſhifts to defend errour, what ſay you unto this; declare unto the world your Cauſe, and ſtay theſe ſtreames of bloud amongſt your Chriſtian Brethren; Publiſh to this Nation the blindneſſe and hardneſſe of their hearts, convince their judgements and underſtandings, that truth may once more flouriſh amongſt us: But if not, be for ever confounded in your ſelves, & cloſe up your lips with perpetuall ſilence hereafter.

Argum. entu à minori ad majus.

But you may ſay, How comes it to paſſe that theſe particulars have not hitherto been diſcovered to the world? I anſwer, The oppoſite power or faction hath been for many Ages prevalent, and where the regall Power hath gained from the the Subject, it is hard and with much difficulty to

Object.

Sol.

he reduced; notwithstanding there hav not wanted in all Ages Champions, and Asertors of these truths, yea even in our owne times there have been *Propugnatores acerrimi*. Witnesse the Case of Mr. *Hampden* formerly remembred, in the damning of which Judgement I thinke all these illegalities appeare, which had it stood in force, property in Estates had been a meere nullity, yea the Axe was laid to the very root, the subversion of Justice and Government; yea, your high Court of Parliament had been of no use for the Subject, since upon the Kings owne personall judgement and opinion, for ought that appeares otherwise, for he that was the sole Judge of the danger of the Kingdome, might have imposed what Taxes he pleased upon his People, and upon refusall have inforced the paiment thereof; a slavish and barbarous judgement, nullifying upon the point all the positive Lawes of this Kingdome, and making the Government it selfe meerely Arbitrary.

Tempore R. 2. *H.* 4 *Thesaurer* chiefe Justice, *nostro tempore* Crooke, Hutton, Weston, &c. *Illustre Parliamentum nunc apud Westminst.*

Nota.

Vir. by that judgement.

Prerogative.

I should likewise here give you a touch of the Kings Prerogatives here, as pertinent to this former Discourse; for some may say, The Liberties of the Subject are much insisted upon here, but where are the Kings Rights and Prerogatives, hath he none at all? Therefore to omit the numerous Prerogatives of the King, partly mentioned in that ancient Statute of *Prerogativa Regis*, or dispersed in the legall Records or Annals, which to present unto you would be too great a labour and needlesse, *Ante diem clauso*

17 *E.* 2. *Devant.*

clauso componet vesper Olympo. I will onely in a way compendiary shadow them unto you, by their rules and restrictions, which like the skilfull Pilot steere the course of this great Ship (the Royall Prerogatives) in the turbulent seas of humane affaires; therefore in the first place note, that the Kings Rights and Prerogatives are differenced in Law, his Prerogatives are onely incident to the Crowne, his Prerogatives are his rights, but not *è converso.*

Wardships, Liveries, Primer-seisin, Marriages, reliefes, fines, *par alienes*, Customes, Mines, Wrecks, Treasure trove, Escheates, Forfeitures, *cum multis aliis &c*, rights and prerogatives *donc al Roy pur defend, soy mesme, & son Realme* of great benefit to the Crowne, and in respect of these the subject to be free from Taxes and Impositions.

The definition of a Prerogative is a power, preheminence, or priviledge which the King hath over and above other persons, and above the ordinary course of Law in the Subjects case in right of his Crowne, his Prerogatives are either personall, or by reason of his possessions, or having relation to both.

Definition of the Prerogative.

All of them have these restrictions, they hold not in any thing injurious to the Subject, they must be by prescription or usage beyond all memory to the contrary; no Prerogative can Commence at this day without authority of Parliament. To give you some instances, The King hath title by Laps to present to a Church, he suffereth a Presentation, the Clerke is inducted and dyes; now the Patron shall present & not the King, and although the Prerogative be, that no laches or negligence shall be imputed to the King *Nullum tempus occurrit Regi*, saith the Statute, yet laches here shall be imputed, or otherwise the subject should be injured in his right; the

Rules restrictive of the Prerogative.

Baskervilles case seventh report.

King had but onely the first or next presentation given him by Law, therefore he shall not have the second. The King may take a man into his protection by his Prerogative, to free him from Suit and molestation if he be imployed in the Kings service (and so legally certified) but he cannot protect him that is in Execution, or against whom an Execution is to be granted at the Suit of the Subject, because that would be tortious to the Subject, and dispossesse him of that interest which the Law hath vested in him.

Viz. By Writ certif. otherwise Perpatbll or letters not of force.

Royall Proclamation a Prerogative.

He hath a great Prerogative indeed, viz. to make Proclamations *Sub pena*, which no Subject can doe, but this Proclamation must be in supplement, or Declaration of a Law already in being, not in derogation of any Law established; nay, I conceive he cannot command any thing by Proclamation (at least *Sub pena*) if there be no Law in force to warrant it, although in this particular his Proclamation be in nature of a Law remediall, preventing some great mischiefe at present by no positive Law redressed. What shall we then thinke of those frequent Proclamations of late times, denouncing men Traitors before the Law hath so adjudged them, contrary to the knowne rules of Justice; yea men, the Members of Parliament, which cannot be legally judged Traitors but by the Justice of that high Court, as formerly you have heard, yea, divers others also no waies sentenced I assure my selfe in any legall way so to be.

To the second rule or restriction of the Preroga-

Prerogative, I need say little, authorities are so plentifull. If Lands come unto the King by purchase, in these he hath no Prerogative, as in those he holdeth *Jure coronæ* by great antiquity. These concerning the *Militia*, the negative voyce in Parliament cannot be Prerogative, they are not within these rules or limitations; for if the Prerogative should be of force for the *Militia*, it would be injurious to the Subject, it should also commence by usage within memory, contrary to the Statute of 28 *E.* 1. yea to other more moderne Lawes. So likewise the negative voice in Parliament, it would not onely be injurious to the Subject, but even to the Lawes and Government it selfe, making them all meerely Arbitrary, yea, contrary to Statute Law, as some good opinion hath been.

The King hath no Prerogative in the Militia. Nota.

25 *E.* 3. 4 *H.* 4. 13. &c. *Vid. ante.*

Mag. Char. ca. 29

Thus you have a briefe view of the Prerogatives, rather shewing you what they are not, then what they are; which I was moved unto, for the satisfaction of those who have not so deep insight into the Lawes, *Perpauca arbusta juvant humilesque myricæ.* And now I have passed through the enemies Quarters, that is to say, the strength of their Positions and Assertions, by which they have misled a great party of this Kingdome, I will a little breath and deliver unto you the summe of all, and run over the heads of their Principles.

Their first, as you may see in the beginning of this Treatise, strikes at the root and branch of Parliaments, the materiall cause thereof

The materiall cause of Parliament.

thereof; that is, the Members of either Houses, sweepes them all away from the service of the Common Wealth, makes that renowned Assembly a meere desolate structure.

Formall cause of Parliaments.

The Kings negative voice in the next place, as one blow takes away the formall cause of Parliaments, that is to say, the Laws and Government, he is by this Doctrine become the Legislator onely; the Members the Lords and Commons are but inconsiderable persons, they fill up roomes like Pageants for shew onely; they out of whose mouthes did flow the Oracles of wisedome are not now so to be reputed; the Kings voice now is a Law, at least if he so please, no law shall be enacted, the concurrence of the Prince in establishing any Law, be it never so necessary is now but a politicke mercy, or a mercifull policy (as some write) not without great perill to be altered, but simply to binde the Prince to ratifie or confirme any Law, is repugnant to Monarchy. Me thinkes I see this great Body Politick, being desperately wounded with illegall pressures ready to expire; call for her Phisitians to minister who some Medicines unto her: Alas, they cannot come, they are slaine with the Sword, they are imprisoned, they stand at the Seat of Judgement, if not capitall. The Phisick that should be given unto her, those Cordiall and Medicinall laws for the restitution of health, see what is likewise become of them. This little worme at the root of Government, a negative voice devoures

Nota.

devoures all; this ſweet ſmelling and amiable Roſe hath at the root a Worme which conſumeth all, whatſoever affordeth delight or comfort. *Quid delubra juvant, eſt mollis flamma medullis.* What doe the high towred conceits of Parliaments availe, this ſoft fire conſumeth by degrees, *Quod non violento ſpiritus Æſtu ex'unt*; That, which the great combuſtions, the rage of fire and ſword could not accompliſh; it waſteth thy very marrow and ſpirits, I meane the ſoule enlivening Lawes; but this onely by way of ſuppoſition. Thus you ſee the Tree by its fruit.

The efficient and finall cauſes of Parliaments we will joyne together, the efficient cauſe of calling Parliaments is the urgent affaires of the Kingdome, as the words of the Writ are for the calling of Parliaments, not the iſſuing of the Writ by the King, that is onely inſtrumentall; and you may ſee by the ancient Law of this Land, Parliaments are to be called ſo often as need ſhall require, by two Statutes in the Raigne of *Edw.* 3. Parliaments are to be holden once in every yeare, and oftner if need ſhall be; Statutes for ought that I know yet in force. With what face then can theſe ſtupid ignorant Advocates on the other part proclaime to the world the paſſing of this Bill for Trienniall Parliaments, an Act of tranſcendent grace and favour, when you ſee, it is an Act of right and juſtice to call them once every yeare, yea, oftner if need ſhall require. Efficient cauſe of Parliaments. 4 *E.* 3. 14. 36. *E.* 3. 10.

Object. But me thinkes I heare it whispered, That this Act for Triennial Parliaments is an Act of speciall grace and favour, notwithstanding any thing yet spoken, as appeares by the very words of the Act, for by this Statute it is provided, That in case the King shall not issue forth Writs for the calling of Parliaments within the time prefixed by the Act, that then every County and Burrough shall have power to proceed to election of their Knights and Burgesses, in such manner as the Act hath appointed. Also it appeareth further, that this Session of Parliament so to be called, shall continue for the space of fifty daies without any power in the King to dissolve it. Parliaments to be called without the King, yea, when called, not to be dissolved by him for such a time. Sure Regall Prerogatives conferred on the Subject.

Not calling Parliaments, or when called the power of dissolution no Prerogative, because against these Statutes, *Vi. Devant. in le* prerogative.

Sol. I answer, Even as the Sunne dispersеth the mists of the night, so in the presence of truth all these foggy vapours of errour will suddainely vanish; for as to the first, the calling of Parliaments, doth it not appeare that they are to be holden once every yeare, yea, oftner if need shall be, by two ancient Statutes yet in force? Which Statutes amongst other good Lawes, the King at his Coronation sweareth to observe and keepe. How can Parliaments be holden if not called? therefore the King is bound of right to call them.

Nota. For the second, That they shall not be dissolved for fifty daies by the King; I answer;

answer, (*Parols font plea*) as the Lawyers say. Are not the words, Parliaments shall be holden once in every yeare? Is the dissolution of Parliaments a holding of them within the letter or sence, of either of these Lawes? Nay further, I say, They shall be holden, that is to say, continued not for fifty daies, but for fifty yeares for ought that i know, within the very words of either of these Lawes, if the affaires of the Kingdome shall so require; for otherwise they are not holden *Cum effectu*, as these Statutes intend, plainly to any mans judgement that is rationall.

Holding of Parliaments implies continuance of them.

Nota. By the ancient law of *Edward* the Confessor, the Parliament ought not to be determined before every bill put in to be discussed, or for difficulty adjourned otherwise, &c.

Thus you see an end, a dissolution of these malignant Objections, but no dissolution of Parliaments, I hasten the finall cause of Parliaments, is to make good lawes, to redresse grievances, to procure peace; but alas, the Dove brings not to us the Olive branch of Peace, the voice af the Tirtle is not heard in our Land; but the waters and inundations are increased so high, that they have even drowned the Arke of God, the Peace of God both in Church and Common Wealth; the urgent affaires of the Kingdome are laid aside. Me thinks the answer of *Jehu* in the Scripture is very pertinent to our purpose, *What hast thou to doe with peace, turne thee behind me? What peace, so long as thy abhominations continue, and are so many?* The bloud of so many of the Saints shed and spilt upon the ground doth cry for vengeance, and the wrath of God is incensed against us.

Finall cause of Parliaments.

No peace so long as sinne aboundeth.

Observe

Note these particulars.

Observe (judicious Reader) from this precedent discourse these few particulars apparent and unanswerable, and as the very minde of the Author of this worke, reflect and contemplate thereupon.

The first is, That the root and originall of all these troubles was the Kings differting the Houses of Parliament, under pretence of Tumult, and in security of his Person, but the truth is evident enough, it was because he could not prevaile in that evill Counsell which then was given him, upon suggestion of I know not what crimes, to take away the Members of the Houses from the service of the Common Wealth, and trying them by Commissions elsewhere by the knowne Lawes of the Land (as they please now to terme them) wrested & misinterpreted by illegall Judgements to Condemne the innocent; for the positive Lawes, and the Law of Parliament much differ, and are not in many particulars consistent together, and yet both Lawes in their proper Spheres and motions just and good Lawes, and howsoever the people be deceived otherwise, and by other pretexts, this is the very truth and beginning of all our miseries; *Hinc illæ lachrimæ.*

Fi. Decr. f. 10.

In his Majesties absence from the Parliament these Agents have not been idle, they then labour to invalide all the proceedings of Parliament without the Kings presence personally, they Arraigne them, and Judge them as *null*, and void by extrajudiciall Declarations, there is a sudden eruption

emption of this impious doctrine, That the King hath an absolute negative voice to all their Votes and Resolutions, and so their sitting there frivolous and contemptible; a position inconsistent with the Government of this Nation, and subjecting both Lawes and people: *Arbitrio principis*, to the will and pleasure of the Prince. A cursed Opinion.

And further, when they see that these Plots are ineffectuall, they take up Armes in plaine termes; But what to doe? To destroy the Lawes and Government for ought that I know, yea, the King himselfe in his Regall Dignity; they colour it with Law and Justice, forthwith issues a Commission, knowne by the name of *The Commission of Array*, an illegall and unjust Commission, as you may perceive by this former Discourse. Afterwards they fly to the defence of the Kings Person, an Act justifiable (as they say) even by the Law of God and Nature, as if the Law of this Land had provided for the Members of this great Body Politicke, and had left the head thereof without any security of it selfe; a high and great scandall to the Government. The truth is, the King is made use of by them, under pretence of the security of his Royall Person, but to shelter themselves from the guilt and penalty of those great and capitall Crimes, of which they are even by the positive and knowne Lawes guilty; you may see how largely and wisely the Law hath invironed the Royall State

3.

Nota.

and

and Dignity, with walles of defence round about in the fore-going Discourse; therefore they need not seeke any other refuge. Last of all, they cast this aspersion upon the Parliament and Kingdome, That they take up Armes against the King, which you may perceive by this Discourse they doe not; they intend no hurt to his Person but the safety thereof, for surely they that seeke to invest the King with the same garments of Peace and Justice, with which the Law hath adorned him, seeke more the security of his Person, then those that seeke by these bloudy courses to present him unto his people in the indeleble Characters (that I say no more) of errour and misgovernment.

The Parliament and people with them, fight for their lawes and liberties; yea for the King, and the maintenance of his regall dignity.

Are Usurpations the Robes of a Prince? Certainly these are not his Parliament Robes; Is any thing denied or with-held that is his Majesties right, if his Majesty would cease these Warres against his People? Thus you see in briefe the beginning, progresse, and continuance of these our calamities unto this day on the Kings part, by evill Counsell fomented and maintained, nothing but violation of Lawes and Justice; and although it be falsly alledged, That the King fighteth for his Crowne, I thinke upon the premisses you may safely conclude, the Parliament and people fight for their Religion, Lawes, and Liberties; yea, to set the Crowne, and the due Rights thereof upon the Kings Head; and his Posterity, which by these illegall waies hath been

been, is, and will be much exposed even to ruine and destruction.

If any man shall be yet so unhappy in himself, as not to rest satisfied with what is here delivered, but that flesh and blood will still contest, I have nothing more to say unto him then this; It is the Lawes and Government of this Kingdome that warrants this truth. *Ex contra negantem principia non est disputandum.*

And now to draw to a conclusion of this worke, you that are filled with knowledge and wisedome (as it is much prattled in by the simple and ignorant) where is your learning and wisedome? may not I say unto you, Behold how that God hath chosen the vile and abject things of the world to oppose the mighty, the foolish things of the world to confound the wise; What are these streames of bloud for? Are they for your Religion? Is this your last objection? take heed that you erre not herein, if you endeavour to disarme Religion, to take away the Bulwarkes and Fortifications thereof, the Lawes and Statutes of this Kingdome, by which our Religion hath been hitherto under God preserved and maintained; Are you not guilty of Sacriledge? Was there not a Statute lately made to disarme the Papist, as a dangerous enemy to our Religion? to take away all Armes and Ammunition from him, as also to banish him from the Kings House or Court, or of his Heires apparent, or within ten miles of the City of *London*. How is this excellent Law most shamefully

The Kings part fight not for Religion, since they seeke to enervate those Lawes which (under God) preserve and secure our religion 3 *Iac. ca.* 5. vi, *devant.*

No cause whatsoever sufficient to justifie the violation of the Lawes, we may not doe evill that good may come of it.

shamefully abused? Not one jot or tittle of the same, but infringed; Have they not freely repaired unto the Kings Court, as likewise unto the Princes? yea, have they not been a Guard unto his Person? Doe you not likewise Arme, and command in Armes the enemies of our Religion against, us the Popish Party, under pretence of the defence of the Kings Person, directly against the Lawes of this Realme, as I have shewed you before. That Law which next Divine Providence is the onely security of our Religion, the disarming and weakening the Papist, and what will ensue upon this; but if they should prevaile (which God avert) an utter ruine of our worship of God, or at least a tolleration of Popery, which would soone extirpate the Protestant Religion.

Now let the world see what zealous Assertors you are of Gods true Worship and Service, when you open the way to all prophanesse and superstition.

The religion which the best of you endeavour for, is full of many superstitious Ceremonies fit to be abolished even in the judgement of the most moderne.

I will not here enter into any discourse of them, as being impertinent, and they being apparent unto the world otherwise.

Thus I hope I have framed a Gordian knot by the Lawes of this Kingdome established, if any man can dissolve or unty the the same, let him *Discendere in arenam*, I heartily desire that by the same rules of

Law

Law and Justice the folly of this worke may be convinced, and that with meeknesse and moderation by the touch-stone of truth, viz. the positive Lawes, that those that sit in darknesse may be enlightned; let no man goe about to hew it in pieces with the sword of violence and injustice, for then heere what the blessed Apostle saith, *By breaking the Lawes dishonourest thou God?* Thinkest thou that the humane Lawes are not the Lawes of God, when thy obedience unto them is so often in the holy Writ injoyned: yea, canst thou imagine, that if thou shalt transgresse this Law, that thou shalt escape the righteous Judgement of God? Are the rich Legacies of thy forefathers bought at so deare a price, with so much bloud and treasure, trampled under thy feet as despicable things? I will say no more. Remember the wise man, let not mercy and truth forsake thee, binde them about thy neck, and I beseech the Almighty God to give unto us all a right understanding in all things. R. 2. Rich Legacies, viz. the positive lawes.

What I intended is now finished, wherein I have squared my course altogether by the positive Lawes, because of exception of the adverse part, not touching upon the legislative or supreme power of Parliaments, it being done already by the Pen of a learned Gentleman, whose abilities are sufficiently knowne. Master *Tryan.*

If I have satisfied any man in what is written, it is my desire. I call Heaven and Earth to witnesse, that according to my know- Epilogue.

knowledge in the Lawes of this Kingdome, I have delivered the truth, and I wish every man to lay his hand upon his heart, and rightly to weigh and consider the premisses, and for passion, sinister ends or respects, to deviate neither to the right hand nor to the left, but with a sincere and cleere minde to implore the Divine assistance, that in so weighty a matter he may act, resolve, and doe that which shall be agreeable to the holy will and pleasure of God, and consonant unto the Honourable Lawes and Government of this flourishing State and Kingdome.

Soli Deo Gloria.

THE

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